

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR**

Original Application No. 961 of 2004

Jabalpur, this the 23rd day of August, 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Bhagatji Kori and 15 others. Applicants

(By Advocate – Shri S. Paul)

V e r s u s

Union of India and two others. Respondents

(By Advocate – Shri P. Shankaran)

O R D E R (Oral)

By M.P. Singh, Vice Chairman –

Heard the learned counsel for the parties and carefully perused the pleadings and records.

2. By filing this Original Application the applicants have claimed the following main reliefs :

“(ii) set aside the action of department in reducing the pay of the applicant by issuing an order dated 23rd March, 2004 Annexure A-1,

(iii) set aside the order dated 8th August, 2001 Annexure A-6 and the order dated 23rd September, 1993 Annexure A-7,

(iv) command the respondents to pay all consequential benefits to the applicants as if the aforesaid orders are never passed,

(v) the respondents be further directed to fix the applicant's pay in the pay scale of Rs. 260-400/- from the date of their appointment.”

3. The brief facts of the case are that the applicants were initially appointed as Labour-B in the respondents organization in the pay scale of Rs. 196-232/- (pre-revised). An Expert Classification Committee (in short ECC) was constituted to evaluate the job rating of the various categories of employees. This committee gave its recommendation which was

implemented by the respondents on 16.10.1981. The various trades ^{which} were earlier in the pay scale of Rs. 210-290/- (pre-revised) were upgraded in the pay scale of Rs. 260-400/- (pre-revised) with effect from 16.10.1981. However, the up-gradation was not done in certain categories of posts. The applicants belong to that category where the up-gradation was not recommended by the committee. The applicants raised their grievances before the anomaly committee. This committee considered and gave its recommendation holding that 23 trades are entitled to be upgraded as Rs. 260-400/- (pre-revised). Pursuant to this decision, a presidential order was passed on 15.10.1984 thereby giving this pay scale of Rs. 260-400/- (pre-revised) with effect from 15.10.1984. The applicants' trades were included in the recommendations of the anomaly committee and consequently, the pay scale of Rs. 260-400/- was given to all the applicants from 15.10.1984. Persons from certain other trades who were adversely affected by the recommendations of the anomaly committee and the presidential order filed a petition before the Hon'ble Supreme Court wherein they have demanded that once a parity is established, the presidential order dated 15.10.1984 should be given effect from 16.10.1981 i.e. the original date of implementation of the ECC recommendation for up-gradation. The Hon'ble Supreme court has allowed the petition and held that the employees are entitled to get the pay scale of Rs. 260-400/- (pre-revised) from 16.10.1981. The applicants are appointed during the period from 16.10.1981 and 15.10.1984. They had been denied the benefit of up-gradation by the respondents from 16.10.1981 on the ground that they were appointed to the grade of skilled worker only after completion of 2 years and before that they were semi-skilled employees. Hence, they cannot be granted the benefit of up-gradation from 16.10.1981. It is an admitted position that all the applicants have been appointed after 16.10.1981. Hence, this Original Application.

4. The learned counsel for the respondents submitted that this case is squarely covered by the judgment of the Tribunal dated 6th May, 2004

[Signature]

passed in OA No. 311/2001 and 367/2001 and 8th April, 2004 passed in OA No. 593/2000.

5. On the other hand the learned counsel for the applicant has submitted that this case is distinguishable and is not covered by the aforesaid judgment of the Tribunal. He has submitted that the applicants are also similarly placed with those persons who filed the petition in the Hon'ble Supreme Court and ^{were} ~~was~~ granted the benefit of the pay scale of Rs. 260-400/- (pre-revised) with effect from 16.10.1981. According to him those who were already working in these trades on 16.10.1981, no such condition of two years has been prescribed for them for up-gradation and therefore, the condition prescribed for two years for fresh recruits after 16.10.1981 in the letter dated 15.10.1984 is not sustainable and is against the rules.

6. The learned counsel for the respondents has controverted this fact and has again submitted that the present case is fully covered by the aforesaid judgment passed by the Tribunal. Paragraphs 2, 3 & 4 of order dated 6th May, 2004 passed in OAs Nos. 311/2001 and 367/2001 are reproduced below :

“2. In both the OAs the applicants have claimed the following main relief –

‘Upon holding that the action of respondents is not giving the benefit of pay scale of Rs. 260-400 from the date of appointment of the applicants is bad in law and command them to grant the same from the date of applicants appointment in the semi skilled trade with all consequential benefits’.

They have also sought a direction to quash the show cause notices issued to them. It is an admitted fact that in both the OAs the applicant have been appointed in the skilled grade after 16.10.1981. Therefore, their cases are fully covered by the decision of this Tribunal in the case of Tushar Kumar Hazra & 13 others Vs. Union of India and others. O.A. No. 593 of 2000 decided on 8.4.2004. Paragraph 5 of the said decision is relevant and the same is reproduced below –

‘It is an admitted fact that on the basis of the recommendations made by the ECC and Anomalies Committee certain trades were upgraded to the pay scale of Rs. 260-400 with effect from 16.10.1981. Certain other trades which were upgraded on the recommendations of the Anomalies Committee from 15.10.1984 were also given the date of effect of upgradation w.e.f. 16.10.1981, consequent to the decision of Bhagwan

Sahai Carpenter (AIR 1984 SC 1215) but the condition (in the case of direct recruit with ITI certificate/ex-trade apprentice/NCTVT inducted in the semi-skilled grade) of two years service for getting the higher pay scale of Rs. 260-400 was also made applicable. It is an admitted fact that the applicants were appointed from 7.3.1982 i.e. between the period from 16.10.1981 to 15.10.1984. The main contention of the applicant is that those who were already working in these trades on 16.10.1981, no such condition of two years has been prescribed for them for upgradation and, therefore, the condition prescribed for two years for fresh recruits after 16.10.1981 in the letter dated 15.10.1984 is not sustainable and is against the rules. We find that those persons who were already in service on 16.10.1981 (which was prescribed as the cut off date) were not fresh/direct recruits and, therefore, the respondents have not prescribed any further period for their upgradation. However, the employer is free to prescribe any conditions of service and also the cut off date in respect of subsequent appointees after 16.10.1981. In view of this, we do not find any illegality in the decision taken by the respondents in their action'.

3. The learned counsel for the applicants has submitted that the decision of the Hon'ble Supreme Court in the case of Union of India and others Vs. K.S. Joseph and others, 2004 SCC (L&S) 414 referred to in OA 593/2000 relates to the employees who were recruited after 1984, therefore, they were held to be not entitled to the benefit of higher upgradation, whereas the present applicants were appointed between 16.10.1981 and 15.10.1984. We find that the decision in the case of K.S. Joseph (supra) has already been discussed in paragraph 6 of the decision of this Tribunal in the case of Tushar Kumar Hazra (supra). The points raised by the learned counsel for the applicants have already been discussed by the Tribunal in para 5 of order in the case of Tushar Kumar Hazra, reproduced in para 2 above. As the present applicants were appointed between 16.10.1981 and 15.10.1984, their cases are fully covered by the aforesaid decision in the case of Tushar Kumar Hazra. We also find that the Hon'ble Supreme Court in the case of Union of India & anr. Vs. P.V. Hariharan & anr, 1997 SCC (L&S) 838 has held that "quite often the Administrative Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated as well as those situated above and below put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter". In the instant case the respondents have taken a conscious decision to grant the benefit of upgradation to those

existing employees who were in service on 16.10.1981. It is an admitted fact that the applicants were recruited after 16.10.1981. Therefore, they cannot compare their case with those of the persons who were in skilled grade as on 16.10.1981. No case of hostile discrimination has been made out by the applicants calling for our interference. In this view of the matter, we do not find any ground to interfere with the decision taken by the respondents.

4. In the result, for the reasons stated above, both the OAs 311/2001 and 367/2001 are dismissed, however, without any order as to costs."

7. We are satisfied that the issue involved in the present case has already been decided by the Tribunal vide order dated 8th April, 2004 passed in OA No. 593/2000 and 6th May, 2004 passed in OAs Nos. 311/2001 and 367/2001. Hence, the decision so passed by the Tribunal in the aforesaid cases shall mutatis-mutandis applicable to the present case as well.

8. In view of the above, the present Original Application is also dismissed. No costs.

9. The Registry is directed to enclose a copy of memo of parties alongwith this order and also supply the copy of memo of parties to the concerned parties while issuing the certified copies of this order.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

"SA"

पृष्ठांकन सं. ओ/न्या.....जबलपुर, दि.....
प्रतिलिपि अर्थे दिल्लि:—

- (1) सचिव, उच्च न्यायालय दार एजेसिएशन, जबलपुर
- (2) आवेदक श्री/श्रीमती/... के काउंसल
- (3) प्रत्यार्थी श्री/श्रीमती/... के काउंसल
- (4) अधिकारी, लेपारा, राजस्थान अधिकारी देतु

उप रजिस्ट्रार

7/6/05
6-9-05

Paul D... 2005
P. Mankar 2005

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6-9-05