

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 593 of 2000

Jabalpur, this the 8th day of April 2004

Hon'ble Mr. M.P. Singh, Vice Chairman

Hon'ble Mr. Madan Mohan, Judicial Member

1. Tushar Kumar Hazra and 13 ors.

APPLICANTS

(By Advocate - Shri S. Paul)

VERSUS

1. Union of India,
through its Secretary,
Ministry of Defence
New Delhi.

2. Chairman/Director General,
Ordnance Factories Board,
10-A, Khudiram Bose Marg,
Calcutta.

3. General Manager,
Ordnance Factory,
Khamaria, Jabalpur.

RESPONDENTS

(By Advocate - Shri P. Shankaran)

O R D E R

By M.P. Singh, Vice Chairman -

By filing this OA, the applicants have sought the following main reliefs:-

"(ii) Upon holding that action of the respondents in not giving the pay-scale of Rs.260-400/- to the applicants from the date of their initial appointment is bad in law, command them to grant pay-scale of Rs.260-400/- to the applicants from the date of their initial appointment;

(iii) If necessary, set aside the order dated 1.11.93 being unconstitutional, invalid and ultra vires;

(iv) Command the respondents to give the pay-scale of Rs.260-400/- to the applicants from the date of their initial appointment and further grant them arrears of salary, proper fixation and other consequential benefits alongwith interest on delayed payment."

2. The brief facts of the case are that the applicants 14 in number belong to different trades such as Grinder,

Turner, Fitter, Machinist and General Fitter. They were

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appointed to these trades on 7.3.1982. An Expert Classification Committee (for short 'ECC') was constituted by the respondent no.1 to evaluate the job ratings/contents of different trades and prescribe their pay scales. The said committee submitted its report and the report was accepted by the respondents. In pursuance of the recommendations of the ECC, the Government has upgraded the pay scales of certain trades from Rs.210-290 to Rs.260-400 with effect from 16.10.1981. There were certain anomalies in the report of the ECC as certain trades were not considered. Accordingly an Anomaly Committee was constituted by the respondents which gave its recommendations that 23 trades are also^{to be} upgraded in the pay scale of Rs.260-400, which includes the trades of the applicants also. The recommendations of the Anomaly Committee was made applicable from 15.10.1984 and accordingly the pay scale of Rs.260-400 was given to the holders of these trades from 15.10.1984. Feeling aggrieved with the discrimination, a writ petition was filed by Bhagwan Sahai Carpenter and others which was decided by the Hon'ble Supreme Court (AIR 1984 SC 1215) directing the respondents to extend the benefit of higher pay scale to the applicants in the said base from the earlier date. In compliance of the aforesaid judgment, the pay scale of Rs.260-400 was given w.e.f.16.10.1981. The applicants have contended that since they were appointed on 7.3.1982 i.e. after 16.10.1981 and before 15.10.1984, therefore, they should have been given the pay scale of Rs.260-400 from the date of their appointment i.e. 7.3.1982. They have further submitted that the pay scale of Rs.260-400 was given from 16.10.1981 or from the date of initial appointments to certain trades such as Millright and Examiner. Since the applicants' trades were also included in the Ministry of Defence circular dated 15.10.1984, there was no justification in not granting the benefits unlike their counterparts. While issuing the

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order dated 15.10.1984(Annexure-A-2) it was decided as under-

"Fresh induction to the trades listed in (i) shall be from...(a)Semi Skilled categories to be identified by you or feeder categories in the pay scale of Rs.210-290 already existing under the present recruitment rules, subject to the workers having rendered a minimum of three years' service in the grade and after passing the prescribed trade test; and (b) direct recruits with ITI certificate/ex-trade apprentices/NCTVT etc. inducted in the semi-skilled grade, who have rendered 2 years service in that grade"

The applicants were granted the upgraded scale of Rs.260-400 from the date of their appointment vide order dated 13.7.1993, however, the said order was withdrawn vide order dated 1.11.1993 because of the above mentioned conditions laid down in the letter dated 15.10.1984(Annexure-A-2).

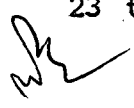
2.1 The contention of the applicants is that they were appointed after completion of trade apprentices and NCTVT and they are performing the same nature of duties which is being performed by any other employee of their trades who were on the rolls of the department on 16.10.1981. In other words, it is contended that the employees of the applicants' trade who were on the rolls of the department on 16.10.1981 and were given the pay scale of Rs.260-400, are performing the same nature of duties which is being performed by the applicants. The applicants have stated that according to the mandate of equal pay for equal work, the applicants cannot be discriminated from the other persons.

2.2 The contention of the applicants is that the circular dated 1.11.1993 directs that individual in possession of NCTVT certificate and appointed to semi-skilled grade of the effected trade on a date after 16.10.1981 but prior to 15.4.1984 will be eligible for upgradation after completion of two years service and the said two years service is to be completed prior to 15.10.1984 for becoming eligible to receive arrears of payment. They have further contended that similarly situated employees who were appointed after 15.10.1984 in the applicants' trades were directly appointed in the pay scale of Rs.260-400.

The applicants who were appointed between 16.10.1981 to

15.10.1984 are getting inferior pay scale of Rs.210-290 against their entitlement. The said impediment of two years was not imposed to the similarly situated employees appointed after 15.4.1984 which has resulted into serious anomaly and the applicants' junior are getting same pay in comparison to the applicants. This action of the respondents has divided a homogeneous class and created a class within the class. Such decision of the respondents is an unreasonable classification without there being any intelligible differentia and object sought to be achieved. Since the applicants have not been given the upgraded scale of Rs.260-400 from the date of their appointment, they have filed this OA.

3. The respondents in their reply have stated that the applicants were appointed with effect from 7.3.1982 as semi-skilled workmen in different trades and were subsequently upgraded after 2 years of appointment in terms of the Government's decision. According to the letter issued by the Ordnance Factories Board on 1.11.1993 the employees in possession of NCTVT certificate and appointed to semi-skilled grade after 16.10.1981 but prior to 15.10.1984 would be upgraded after completion of two years of services. The applicants cannot compare their position with the trade of Millwright. This trade alongwith a few others were upgraded to the scale of Rs.260-400. The upgradation of pay scales have been done based on the job evaluation carried out by the ECC/Anomaly Committee. It is further stated by the respondents that the employees who were already in service and occupying semi-skilled posts, in the trades upgraded by the Anomalies Committee as on 16.10.1981 were given upgraded pay scales from that date based on Ordnance Factories Board letter dated 15.4.1993. The respondents have specifically stated that "all appointments made after 15.10.84, in the 23 trades are promoted to skilled grade only on completion



of 2 years of service in semi skilled grade as per M of D order No.3808/DS/(O&M)/Civ-I/84 dt.15.10.84". They have further contended that the applicants have not metioned any specific cases. The contention of the applicants that similarly situated employees appointed after 15.10.1984 in their trades were given upgradation from the date of their appointments, is specifically denied by the respondents.

4. We have heard the learned counsel for the parties and carefully perused the records.

5. 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 (supra) but the condition (in the case of direct recruit with ITI certificate/ex-trade apprentices/NCTVT inducted in the semi-skilled grade) for 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.

6. In a recent decision in the case of Union of India and others Vs. K.S. Joseph and others, the respondents/^{who} in the year 1985 were appointed/as semi skilled workmen, had demanded that their posts be upgraded from semi-skilled workmen to skilled workman after two years of service in terms of the order dated 15.10.1984. Their claim was rejected by the department. Thereafter they filed OA before this Tribunal and their case was allowed. Thereafter, the respondents before the Hon'ble Supreme Court filed the appeals/contending that the recommendations contained in the letter dated 15.10.1984 was a one time scheme wherein it-self it was stipulated that future recruitments in the feeder post would be governed by the fresh recruitment rules and, therefore, the Tribunal committed an error in applying the same in the case of respondents. The Hon'ble Supreme Court allowing the appeals has held that-

"We find substance in the argument. The letter dated 15.10.1984 issued by the Ministry of Defence provided that a decision has been taken on the unanimous recommendation of the Anomalies Committee to upgrade even categories of jobs from semi-skilled grade workmen to skilled grade workmen in the pay scale of Rs. 260-400. It further provides that fresh induction in the trade list shall be regulated by the existing statutory rules and the same would be applied for recruitment. It also provided that the recommendation was by way of one-time measure and shall not be applicable in future. In view of the aforesaid recommendation contained in the letter dated 15.10.1984, the respondents could not derive any benefit. Admittedly the respondents were recruited in the year 1985 under the existing statutory rules and thus, the recommendations contained in the letter dated 15.10.1984 could not have been made applicable therein"

Thus, in the aforesaid case the Hon'ble Supreme Court has clearly held that the employees recruited after implementations of the recommendations of the ECC/Anomalies Committee are not entitled to the upgraded scale of skilled tradesman

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as it was a one time measure scheme and the directly recruited employees are governed under the existing statutory rules.

7. In this view of the matter, we do not find any merits in this Original Application and it is accordingly dismissed. No costs.

8. The Registry is directed to also supply a copy of the memo of parties, along with a copy of this order, at the time of supplying copies of this order to the concerned parties.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

rkv.

पृष्ठांकन सं जो/न्या.....जयपुर, दि.....

पंजीयन सं.....

- (1) सचिव, उच्च न्यायालय जयपुर, जयपुर
- (2) आवेदक श्री/श्रीमती/श्रीमान.....के काउंसल S. Paul
- (3) प्रत्यर्दी श्री/श्रीमती/श्रीमान.....के काउंसल P. Shankar
- (4) बांधपाल, कोषाध्यक्ष, जयपुर जल निकाश विभाग एवं आवश्यक कार्रवाई हेतु

16/4/04

Issued

13.4.04