

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

ORIGINAL APPLICATION NO.060/00776/2014

**Order Reserved on 07.04.2015
Pronounced on 10.4.2015**

**CORAM: HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)
HON'BLE DR. BRAHM A. AGRAWAL, MEMBER (J)**

- 1. Nanak chand (T. No.3361) S/o Sh. Parma Nand aged 57 years.
- 2. Surinder Singh (T. No.3441) S/o Late Sh. Hukumat Singh.
- 3. Satya Paul (T. No.3442) S/o Sh. Des Raj.
- 4. Rattan Lal (T. No.3459) S/o Sh. Anant Ram.
- 5. Sham Lal (T. No.3599) S/o Sh. Kaka Ram.
- 6. Raj Kumar (T. No.3075) S/o Lt. Sh. Babu Ram.

All are working as Marker in the office of Commandant, 1 FOD, C/o 56 APO.

... Applicants

Versus

- 1. Union of India through Secretary, Ministry of Defence, North Block, New Delhi.
- 2. Director General of Ordnance Services-Master General of Ordnance Branch, Army Headquarters, DHQ, Kashmir House, Rajaji Marg, New Delhi.
- 3. Commandant, 1 Field Ordnance Depot, C/o 56 APO.

... Respondents

Present: Sh. Jagdeep Jaswal, counsel for the applicants.
Sh. K.P.S. Dhillon, counsel for the respondents.

ORDER

BY HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:

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"8 (i) That impugned order dated 12.08.2014 (A-5) be quashed and set aside being wholly illegal and arbitrary.
(ii) That it be declared that the applicants are entitled to the benefit of skilled grade w.e.f. 16.10.1981 notionally and actual arrears from the date it has been granted to the similarly situated employees in the Omkar Nath Khushwaha's case in accordance with clubbed benefit of judgments Co-ordinate Bench of this Tribunal in Annexure A-1 and A-2 with all consequential benefits."

2. Averment has been made in the O.A. that the applicants were initially recruited as Mazdoor and had been subsequently promoted as Markers. The category of Markers was declared entitled to the pay scale granted to the category of Painters and Decorators in the Skilled Category after the judgment of Hon'ble Allahabad High Court in the case of Omkar Nath Khushwaha and Others vs. Union of India & Others decided on 08.07.2003 in writ petition no. CWP No.8309 of 2000. Respondents had also filed SLP No.(C) 1124/2006 in the case of Omkar Nath Khushwaha and now the SLP filed by the respondents has been decided in favour of similarly placed employees and dismissed vide order dated 24.02.2011. Though it was obligatory on the part of the respondents to have extended the benefit of this judgment to other Markers, who were similarly situated, however this benefit was not extended to them in clear violation of various judgments and accordingly, other Markers were constrained to file OA No.729/PB/2007 before this Tribunal which was allowed in favour of the applicants therein vide order dated 08.12.2008

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(Annexure A-1). The Respondents filed SLP (C) No.27925/2010 against the order dated 08.12.2008 and the same was tagged with SLP (C) 1124/2006 in the case of Omkar Nath Khushwaha and now both the SLPs filed by the respondents have been decided in favour of the applicants.

3. In the grounds for relief it has, inter alia, been stated as follows:

- i. Pursuant to MOD letter dated 20.05.2003, the left out categories are also considered as skilled and the category of Markers was also mentioned amongst skilled categories vide CE Northern Command Letter dated 06.08.2013 (A-7). Once respondents have accepted the position that category of Markers is skilled category and is amongst left out categories, the denial of benefit of skilled grade to the applicants cannot be sustained in the eyes of law.
- ii. Hon'ble Allahabad High Court clearly found that there is discrimination as far as the category of Markers vis-à-vis painters and decorators and such order has not been quashed by the Hon'ble Supreme Court of India. The Hon'ble Apex Court in its order dated 24.02.2011 have observed that the pay commission and sub-committee having considered the issued has made recommendation and in the said circumstances the Hon'ble High Court passed order directing the respondents to categorize the Markers as skilled workers at par with painters and decorators. The Hon'ble Apex Court clearly observed that they are not inclined to interfere in the matter, meaning thereby that respondents therein who were also working as Markers were treated as skilled workers, whereas present applicants are still being dubbed as semi skilled workers. Once the judgment of the Hon'ble Allahabad High Court has not been quashed and set aside, the same will still hold the field. A copy of the judgment dated 08.07.2003 passed by the Hon'ble Allahabad High court and order dated 24.02.2011 passed by the Hon'ble Supreme Court are annexed as Annexure A-8 and A-9 respectively.

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iii. The case of the applicants is also squarely covered by the decision dated 08.12.2008 (A-1) and dated 07.02.2013 (A-2) of this Tribunal in the case of Keshav Singh Vs. UOI and Ors. in O.A. No.605/PB/2012.

4. In the written statement filed on behalf of the respondents facts of the matter have not been disputed. It has further been stated that the applicants were initially recruited as Mazdoor and later on were given promotion to the post of Marker by Departmental Promotion Committee. The category of Marker is semi skilled and not entitled for grant of benefits as applicable to skilled category. The Expert Classification Committee had not classified the Markers as a skilled category and as per their recommendation the trades were classified into Unskilled (Pay Scale of Rs.196-232), Semi Skilled (Pay Scale of Rs.210-290), Skilled (Pay Scale of Rs.260-400), Highly Skilled Grade Grade-II (Pay Scale Rs.330-480) and Highly Skilled Grade-I (Pay Scale Rs.380-560) and these scales were implemented vide Ministry of Defence letter dated 11.05.1983 w.e.f. 16.10.1981. The pay scale of Marker was revised as per the 5th Central Pay Commission to Rs.2650-4000 and further as per 6th Pay Commission it has been revised to Rs.5200-20200 with Grade Pay of Rs.1800/-.. The Hon'ble Supreme Court in SLP No.6305/2009 filed by Union of India against the order passed by Hon'ble High Court of Allahabad has held that "The directions so issued by the High Court shall be confined only to the case of the respondents and the same shall not be

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treated as precedent." Thus, it is clear from the judgment of the Hon'ble Supreme court that the Markers have not been declared as Skilled Category and the judgment was restricted to the respondents of the petition only. Till today, the Government has not issued any letter to treat the Markers as a skilled category. The job of painter and decorator and Marker is different as painter and decorator come under artisan category.

5. Arguments advanced by learned counsel for the parties were heard when learned counsel for the applicants relied on case law cited by him to press that the applicants were entitled to be treated as skilled category employees and should be remunerated as such.

6. Learned counsel for the respondents stated that Marker had not been declared as Skilled category and the Hon'ble Supreme Court in SLP No.6305/2009 while considering the order of the Hon'ble High Court of Allahabad directed that the directions of the High Court would be confined only to the case of the respondents and the same shall not be treated as precedent. He stated that in view of the observations of the Hon'ble Apex Court, no relief could be granted to the applicants in the present case.

7. We have carefully considered the pleadings of parties, material on record and arguments advanced by learned counsel. It is established beyond doubt that till date category of Marker has not been

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notified as 'Skilled Category'. The applicants in the present O.A. can also not seek benefit of judgment of the Hon'ble High Court of Allahabad in the case of Omkar Nath Khushwaha (Supra) since Apex Court while considering the SLP filed against this judgment, while declining to interfere in the matter, directed that this judgment would not be treated as a precedent. Hence, we are unable to grant any relief in the matter and the O.A. is rejected.

(DR. BRAHM A. AGRAWAL)
MEMBER (J)

(RAJWANT SANDHU)
MEMBER (A)

Place: Chandigarh.
Dated: 10.4.2015

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