

**O.A No.444/2012  
With  
O.A. No. 445/2012  
O.A. No.446/2012  
M.A. No. 1063/2018**

**Reserved On:19.07.2018**  
**Pronounced on:24.08.2018**

**Hon'ble Mr. V. Ajay Kumar, Member (J)**  
**Hon'ble Mr. A.K. Bishnoi, Member (A)**

**OA No. 444/2012**

Shri Kameshwar Sharma  
S/o Shri Ram Kishan Sharma  
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## Residential address

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(By Advocate: Shri G.D. Bhandari)

Versus

Union of India, through

1. The Secretary,  
Ministry of Urban Development,  
Nirman Bhawan,  
New Delhi.
2. The Director General (Works),  
Central Public Works Department,  
Nirman Bhawan,  
New Delhi.

3. The Superintendent Engineer (Co-ord)(Elect.)  
Central Public Works Department,  
Block-I, Level-7, R.K. Puram,  
New Delhi.
  4. The Executive Engineer (Elect.)  
Division 151, PWD,  
Lok Nayak Hospital,  
New Delhi.
  5. The Secretary,  
Department of Personnel and Training,  
Government of India,  
New Delhi.
- ...Respondents

(By Advocate: Shri Satish Kumar)

**OA No. 445/2012**

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.....Applicant

(By Advocate: Shri G.D. Bhandari)

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Division 151, PWD,  
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New Delhi.
  5. The Secretary,  
Department of Personnel and Training,  
Government of India,  
New Delhi.
- ...Respondents

(By Advocate: Shri Satish Kumar)

**OA No. 446/2012**

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...Applicant

(By Advocate: Shri G.D. Bhandari)

Versus

Union of India, through

1. The Secretary,  
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New Delhi.
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Department of Personnel and Training,  
Government of India,  
New Delhi. ...Respondents

(By Advocate: Shri Satish Kumar)

### **ORDER**

**By Mr. V. Ajay Kumar, Member (J)**

As prayed by the learned counsel for the parties, and as the facts and law involved in all these OAs are common, the same are disposed of by way of this common order. However, for the sake of convenience, the facts in OA No.446/2012 are taken into consideration.

2. The applicants, who are working as Electricians in the respondent-Central Public Works Department (CPWD), filed the OAs questioning the orders of reversion to the post of Wireman.

3. The CPWD Mazdoor Union raised an industrial dispute and the same was referred to Arbitration and in view of the difference of opinion between the two Arbitrators, the same was referred to an Umpire and the said dispute finally ended by way of an Award passed under Section 10-A of the Industrial Disputes Act, 1947,

published in the Gazette under Section 17 of the Industrial Disputes Act on 15.02.1988. The specific term agreed between the parties and referred to the Arbitrators was “whether the demand of the CPWD Mazdoor Union regarding re-categorisation/re-classification of work charge staff and regular classified categories with effect from 01.01.1973 on the analogy of classification given in the scheduled employment (i) construction or maintenance of roads or in building operations; and (ii) the maintenance of buildings and employment in the construction and maintenance of runways as listed in the annexure is justified? If not, to what relief the workmen concerned are entitled?” The Umpire has re-categorised some unskilled workmen into skilled workmen and some skilled workmen into highly skilled workmen. The Umpire has followed the principle of a certain length of service for the purposes of getting into higher category, such as, some skilled and highly skilled. In some cases, the trade test for the purposes of promotion has been abolished. In certain categories of workmen method of promotion and the ratio of promotees and direct recruits has been prescribed. The Umpire has directed that the re-categorisation should be notionally fixed from 01.01.1973 and the arrears should be paid to the workmen from 01.04.1981.

4. The Union of India challenged the said Award in Civil Writ Petition No.2792/1988 before the Hon’ble High Court of Delhi which was partly allowed by order dated 28.01.1992. The SLP filed

in the Hon'ble Supreme Court against the CWP No.2792/1988 was dismissed in limine on 12.10.1993. The CCP No.295, 306 of 1993 and 1/1995 were disposed of by order dated 19.11.1996 by the Hon'ble High Court of Delhi. Thereafter, the respondents complied with the Award published on 15.02.1988, and as modified by the Hon'ble High Court, vide Annexure A-7. Office Memorandum dated 07.05.1997.

5. The applicant was originally appointed as Muster Roll Assistant Wireman in 1976 but was later on confirmed as Assistant Wireman, w.e.f. 23.07.1988. Later, in pursuance of the above referred Award, he was designated as Wireman, w.e.f. 07.05.1997, on merger of his post of Assistant Wireman with Wireman. The respondents have granted seniority to the applicant in the category of Wireman from 23.07.1988, i.e., the date on which he was regularly appointed as Assistant Wireman, and accordingly, he was promoted to the post of Electrician on 02.04.2004.

6. But in reply to the clarification sought by the CPWD with regard to the fixing of the seniority of the workers who worked in the Assistant categories prior to their merger with their respective main categories in implementation of the Arbitration Award, the Department of Personnel & Training clarified that the workers who were earlier in the Assistant categories may be placed en-bloc below the workers in the main category in the seniority list as on date of issue of orders dated 07.05.1997. The respondents before the said

clarification, considered the seniority of the applicant, in the category of Wireman, with effect from 23.07.1988, i.e., the date of his appointment as Assistant Wireman as the said post was merged with the post of Wireman as per the Award and accordingly promoted him as Electrician. But after the receipt of clarification from DOP&T, the respondents reviewed the seniority of the applicant and accordingly fixed the date of seniority of the applicant on the post of Wireman as 07.05.1997, i.e., the date of order of merger of Assistant categories with the respective main categories and as a consequence thereto, passed an order on 29.10.2004 reverting the applicant from the post of Electrician to that of Wireman. Aggrieved by the same, the applicant filed OA No.2674/2004 and this Tribunal by order dated 03.05.2007 noticing that the said reversion order dated 29.10.2004 was passed without following due process of law, partly allowed the OA by quashing the reversion orders. However, liberty was granted to the respondents to follow due process in accordance with law. When the respondents again passed cryptic orders, the same were challenged in OA No.1899/2008 by the applicants and the said OA was also allowed on 18.05.2011 by directing the respondents to pass fresh orders after considering the representations made by the applicants.

7. In pursuance of the said orders, the respondents have passed the impugned orders in the OA.

8. Heard Shri G.D. Bhandari, the learned counsel for the applicants in all the OAs and Shri Satish Kumar, the learned counsel for the respondents in all the OAs and perused the pleadings on record.

9. Shri G.D. Bhandari, the learned counsel appearing for the applicants submits that the merger of the post of Assistant Wireman in which the applicant was working was done with the post of Wireman, in pursuance of the Award as modified by the Hon'ble High Court of Delhi and upheld by the Hon'ble Supreme Court and hence the applicants were entitled to fix their seniority in the post of Wireman with effect from the date of their appointment as Assistant Wireman since those posts were merged with the posts of Wireman as per the Award. The change of the seniority of the applicants in the Wireman category basing on the DOP&T clarification and the consequential reversion of the applicant from the post of Electrician to the post of Wireman is illegal and against the award.

10. Per contra, Shri Satish Kumar, learned counsel appearing for the respondents would submit that fixation of seniority was never an issue either in the Award or before any other legal forum. The Award only mandated for merger of the Assistant categories such as, Assistant Wireman in which the applicant was working with the respective main categories such as Wireman, and accordingly the same was implemented vide orders dated 07.05.1997. But when



issues were raised with regard to the seniority between the Assistant Wireman whose posts were merged with Wireman vis-à-vis the persons who were already appointed and working as Wireman, clarification was sought and the DOP&T has clarified that the workers who were earlier in the Assistant categories may be placed en-bloc below the workers in the main category in the seniority list as on the date of issue of merger orders dated 07.05.1997. As a result, the seniority of the applicants were reviewed and refixed as 07.05.1997 in the category of Wireman, i.e., the date of issue of orders of merger. The applicants without questioning the clarification of the DOP&T or the orders passed by the respondents in re-fixing the seniority of the applicants as on 07.05.1997 for all these years cannot question the consequential orders of reversion which was based on the re-fixation of their seniority.

11. As rightly submitted by the learned counsel for the respondents that the fixation of seniority, after merger, between the persons who were holding Assistant categories and the persons who were already in the main categories, was not an issue either in the Award or in the modified orders of the Hon'ble High Court at any stage. It is also true that though the applicants filed number of OAs against the earlier reversion orders but the clarification of DOP&T and the consequential orders of refixation of seniority were not specifically challenged or any finding was given in any of those

cases which were the basis for the reversion orders questioned in those OAs. However, it is to be seen that the said OAs were mainly allowed on the grounds of violation of principles of natural justice and there was no occasion for this Tribunal to give any finding on the issue of fixation/re-fixation of seniority of the applicants in the category of Wireman, i.e., after merger. In the instant OAs, the applicants sought for quashing of the reversion orders dated 31.01.2012 along with DOP&T's orders on the ground that the same are against the Award as modified by the Hon'ble High Court of Delhi and upheld by the Hon'ble Apex Court.

12. As observed above, seniority between the Assistant categories and the main categories, after merger, was not an issue in any of the earlier litigations between the parties. In any event, we do not find any illegality in placing the Assistant categories, such as, the applicants en-bloc below the workers of main categories, such as, Wireman after merger in the seniority list.

13. In **K.C. Gupta and Others Vs. Lt. Governor of Delhi and Others, 1994 Supp (3) SCC 408**, Trained Graduate Teachers (Middle) with a lower pay scale and Trained Graduate Teachers (Higher Secondary) with a higher pay scale were merged into one cadre and given an unified and revised pay scale, it was held that 'where a lower grade and a higher grade were merged into one cadre with a higher pay scale, period of service in the lower grade would not count for the purpose of seniority in the new cadre'.

14. We are fortified with **K.C. Gupta** (supra) in saying that the respondents were right in placing the applicants and other workers originally belonging to the Assistant categories en-bloc below the workers of main categories, in the seniority list, after merger. But from what date, the merger came into effect, as per law and from what date the applicants and other workers originally belonging to Assistant categories are to be placed en-bloc below the workers of main categories, is the issue to be determined.

15. Admittedly, the Award passed under Section 10-A of the Industrial Disputes Act, 1947 was published in the Gazette under Section 17 of the Industrial Disputes Act, 1947 on 15.02.1988. The Hon'ble High Court partly allowed the Writ Petition by order dated 28.01.1992. It is necessary to examine some of the observations made by the Hon'ble High Court, before proceeding further, and the same read as under:-

“.....The Umpire has directed that the re-categorisation should be notionally fixed from 01.01.1973 and the arrears should be paid to the workmen from 01.04.1981.... Section 17-A of the Industrial Disputes Act, gives wide powers to the appropriate government to declare that the Award shall not become enforceable on the expiry of the period of 30 days from its publication if it is expedient on public grounds affecting national economy to do so. It is true that the Central Government has not availed of this power and had merely published the Award as it is under Section 17 of the Act. The Award is published in 1988..... Where the award is under Section 10-A of the Industrial Disputes Act and where the appropriate government has not exercised the power under Section 17-A, the Court should be slow to make major changes in the Award. On examination of all aspects of the matter, we have come to the conclusion that the umpire has balanced the two extreme positions, one regarding payment of arrears for 15 years and other not to pay

arrears at all. The date fixed by the Umpire for payment of arrears, i.e., 01.04.1981, is not arbitrary and is based on the same perception of the realities by the Umpire. The submissions of the petitioner and the respondent union in this regard are rejected.....For the reasons stated above, the writ petition is partially allowed. There shall be no order as to costs.”

16. It is also relevant to note certain paragraphs in CCP Nos. 295, 306/1993 and 1/1995 which were disposed of on 19.11.1996, i.e., after the SLP against the aforesaid Writ Petition was dismissed and the same read as under:-

“These three contempt petitions arise out of the judgment, dated 28 January 1992, and hence are disposed of by this common order. To appreciate the controversy, we shall treat the facts in CCP 295/93 as illustrative.

It is indeed unfortunate that in spite of the said authoritative pronouncement of this Court in CWP No.2792/84, that part of the award, dated 31 January 1988 (published in the Gazette on 15 February 1988) which has been upheld in the said judgment has not been implemented by an organ of the State, namely, the Central Public Works Department (for short the C.P.W.D.), despite specific directions, which has resulted in proliferation of unnecessary and avoidable litigation.

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The workers union accepted the award given by the Umpire. However, the Union of India challenged the award by filing a writ petition in this Court being CWP No.2792/88. All sorts of objections, not necessary to detail here and having been considered and decided in judgment dated 28 January 1992 were raised. Suffice it to say that out of three main objections, namely : (1) Assistant categories, like Asstt. Mason etc. presently in semi-skilled category being classified as skilled category workmen; (ii) a general recommendation that all workmen classified as unskilled should be placed under some skilled category when the workmen complete five years regular continuous service and (iii) recommendation regarding abolition of trade test in certain categories was beyond the terms of reference, the latter two objections were upheld.

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The petition for contempt is resisted by the respondent, Union of India, inter alia, on the ground that there is no wilful disobedience by the respondents of any judgment, decree or

direction etc.; to implement the award a number of calculations have to be made by the Department from 1973 and cases of thousands of employees have to be reviewed by the Department, which is taking time; the contempt proceedings cannot be the means of execution or realisation of the amount due under the decree/award; a specific remedy is available to the petitioner to get the award implemented under Sections 29 and 33C(2) of the Act. Various steps required to be taken for the implementation of the award have been spelt out in the affidavit and it is stated that all possible efforts will be made to ensure payment of workman during the financial years 1993-94 and 1994-95.

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.....We further find from the above extracted objection that the plea of "automatic promotion" as was raised in respect of general recommendation of automatic grant of semi-skilled category after a period of five years of continuous service was not, for obvious reasons, specifically raised in respect of recommendation of Assistant category with main category. In this view of the matter we feel that not it is too late in the day for the respondent to raise the controversy with regard to the merger of Assistants category with main category and its re-classification. Similarly the contention regarding having financial burden raised earlier and not upheld, is now not relevant.

In view of the foregoing discussion we have no hesitation in coming to the conclusion that there was no justification for the respondent in not implementing the award given by the Umpire in entirety, as modified by this Court vide judgment dated 28<sup>th</sup> January, 1992, particularly when a specific direction was issued to it on 25<sup>th</sup> August, 1993 to implement the said judgment and to make payment by 30<sup>th</sup> September, 1993 and technically there has been violation of the directions. However, since the respondent's so called doubts are all now set at rest, we grant to it three months more time to implement the award given more than eight years ago. Respondent's failure to comply with this order will be at its own risk and may expose it to the revival of these contempt proceedings for non-compliance of this order as well as order dated 25<sup>th</sup> August, 1993.

Subject to above, for the present, the contempt notices issues to the respondent are discharged".

17. A careful reading of the various observations in the Award and the orders of the Hon'ble High Court both in CWP as well as CCP clearly reveals that the direction of the Umpire made in the Award

that the re-categorisation should be notionally fixed with effect from 01.01.1973 was in no way amended or modified and the same was duly accepted/approved upto the Hon'ble Apex Court. Even in the Annexure A-7 Office Memorandum dated 07.05.1997 which was issued in compliance of the aforesaid orders, there was no different date mentioned for merger and re-classification of the categories other than the date, as directed in the Award, i.e., 01.01.1973. Once the direction was to merge/reclassify the categories with effect from 01.01.1973, and whoever regularly appointed in the Assistant categories between 01.01.1973 till the date of 07.05.1997, i.e., the date of implementation of the Award, were entitled to merger/re-classification with the main categories with effect from the date on which they were regularly appointed. Therefore, whoever were regularly recruited in Assistant categories prior to 07.05.1997 were to be placed below the workers of main categories from the date of their regular appointment in the Assistant categories. Once the applicant was admittedly, appointed as Assistant Wiremen on regular basis with effect from 27.03.1988, i.e., after 01.01.1973, the date on which the Award came into effect and before 07.05.1997, i.e. the date on which the Award was implemented, he was entitled to be placed below the main categories whoever was in service as on 23.07.1988. Hence, the action of the respondents in placing the applicant below those main category persons who were in service in the main categories as on 07.05.1997 instead of placing him

below those persons in main categories who were in service as on 23.07.1988 is against the Award as upheld upto the Hon'ble Apex Court.

18. As observed above, the Award was passed under Section 10-A of the Industrial Disputes Act, 1947 and published in the Gazette under Section 17 of the Industrial Disputes Act on 15.02.1988.

19. Section 17 and 17-A of the Industrial Disputes Act, 1947 which governs the publication and commencement of the Award, read as under:-

**“17. Publication of reports and awards.-**

(1) Every report of a Board or Court together with any minute of dissent recorded therewith, every arbitration award and every award of a Labour Court, Tribunal or National Tribunal shall, within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit.

(2) Subject to the provisions of section 17A, the award published under sub- section (1) shall be final and shall not be called in question by any Court in any manner whatsoever.

**17A. Commencement of the award.-**

(1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under section 17: Provided that--

(a) if the appropriate Government is of opinion, in any case where the award has been given by a Labour Court or Tribunal in relation to an industrial dispute to which it is a party; or

(b) if the Central Government is of opinion, in any case where the award has been given by a National Tribunal, that it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of the award, the appropriate Government, or as the case may be, the Central Government may, by notification in the Official Gazette, declare that the award shall not become enforceable on the expiry of the said period of thirty days.

(2) Where any declaration has been made in relation to an award under the proviso to sub- section (1), the appropriate Government or the Central Government may, within ninety

days from the date of publication of the award under section 17, make an order rejecting or modifying the award, and shall, on the first available opportunity, lay the award together with a copy of the order before the Legislature of the State, if the order has been made by a State Government, or before Parliament, if the order has been made by the Central Government.

(3) Where any award as rejected or modified by an order made under sub- section (2) is laid before the Legislature of a State or before Parliament, such award shall become enforceable on the expiry of fifteen days from the date on which it is so laid; and where no order under sub- section (2) is made in pursuance of a declaration under the proviso to sub- section (1), the award shall become enforceable on the expiry of the period of ninety days referred to in sub- section (2).

(4) Subject to the provisions of sub-section (1) and sub-section (3) regarding the enforceability of an award, the award shall come into operation with effect from such date as may be specified therein, but where no date is so specified, it shall come into operation on the date when the award becomes enforceable under sub-section (1) or sub-section (3), as the case may be.]”

20. A perusal of the above referred provisions of the Industrial Disputes Act, 1947 read with the observations made by the Hon’ble High Court with regard to the exercise of the power by the Government under Section 17-A also took us to the conclusion that the direction with regard to the re-categorisation/re-classification/merger, as directed in the Award came into effect from 01.01.1973 itself. In this view of the matter also, the action of the respondents in fixing the seniority of the applicants as on 07.05.1997 as against the date of their regular appointment in the Assistant categories which was much prior to 07.05.1997 is against the Award and the orders of the Hon’ble High Court and accordingly they are liable to be quashed.



21. For the aforesaid reasons, the OAs are allowed and the impugned orders are quashed and the respondents are directed to reinstate the applicants as Electricians with all consequential benefits. This exercise shall be completed within 8 weeks from the date of receipt of a copy of this order. MA No. 1063/2018 also stands disposed of. No costs.

Let a copy of this order be placed in all the OA files.

**(A.K. BISHNOI)**  
**MEMBER (A)**

**(V. AJAY KUMAR)**  
**MEMBER (J)**

RKS