

(OA No. 061/00081/2017
 OA No. 061/00020/2016
 OA No. 061/00084/2017
 OA No. 061/00589/2017
 OA No. 061/00912/2017
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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. P. GOPINATH, MEMBER (A)**

...

Order reserved on:

Chandigarh, this the 1st day of June, 2018

1. ORIGINAL APPLICATION NO. 061/00081/2017

1. MES No. 502885 Sh. Bishamber Dass, Valveman S/o Late Sh. Manga Ram, aged 57 years, resident of House no. 62, Ward No. 1 Airport Road, Narwal Pain, Jammu Cantt. Satwari.(Group-C)
2. MES No. 502883 Sh. Bachhan Lal, Valveman S/o Ami Chand resident of Bhour Kumlian, Ward no. 1, Jammu.
3. MES No. 365855 Sh. Mohinder Pal, Valveman S/o Punajaboo Ram, resident of House no. 72, Ward No. 2, Bari Brahma, Distt. Sambha(J&K).

....APPLICANTS

All the applicants are working/retd. as valveman under respondent no. 5.

(Argued by: Shri Jagdeep Jaswal , Advocate)

Versus

1. Union of India, Through Secretary to Govt. of India Ministry of Defence, South Block, New Delhi.
2. Engineer-in-Chief, E-in-C's Branch, Integrated Headquarter, Ministry of Defence, Kashmir House, Rajaji Marg, New Delhi.
3. Chief Engineer, Western Command, C/o 56 APO.
4. Commander Works Engineer, Jammu.
5. Garrison Engineer, Kaluchak.)

....RESPONDENTS

(By Advocate: Shri Ram Lal Gupta)

2. ORIGINAL APPLICATION NO. 061/00020/2016

MES No. 503932 Narinder Kumar Age 59 years S/o Lt. Bk. Puran Chand R/o Narwal Pain, Air Port Road, Satwari, Jammu and presently working as Fitter/Pipe (Group C) C/o Garrison Engineer, Kaluchak.

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....Applicant

(Argued by: Shri Jagdeep Jaswal , Advocate)

Versus

1. Union of India Through Secretary to Govt. of India, Ministry of defence, South Block, New Delhi.
2. Engineer-in-Chief, ENC Sec. H, Room No. 112, Integrated Head Quarter, Ministry of Defence (Army), Kashmir House, Raja Ji Marg, New Delhi.
3. Chief Engineer, Headquarters, Western Command, C/o 56 APO, Chandimandir.
4. Commander Works Engineer, Jammu.
5. Garrison Engineer, Kaluchak.

...Respondents

(By Advocate: Shri Ram Lal Gupta)

3. ORIGINAL APPLICATION NO. 061/00084/2017

1. MES No. 504135 Joginder Singh S/o Sh. Sham Singh aged 61 years, (Group-'C') retired as valveman in the office of GE, Nagrota now resident of V & PO- Kirpind, Tehsil-Arthpura, Distt.- Jammu(J&K).
2. MES No. 504996 Chet Ram S/o Sh. Chaju Ram (Group-'C') working as valveman in the office of GE, Nagrota (J & K).

...Applicants

(Argued by: Shri Jagdeep Jaswal , Advocate)

Versus

1. Union of India, Through Secretary to Govt. of India, Ministry of Defence, North Block, New Delhi.
2. Engineer-in-Chief, E-in-C Branch, Integrated Headquarter, Ministry of Defence (Army) Kashmir House, Raja Ji Marg, New Delhi.
3. Chief Engineer, Northern Command, C/o 56 APO.
4. Commander Works Engineer, Jammu.
5. Garrison Engineer, Nagrota, Jammu.

...Respondents

(By Advocate: Shri Ram Lal Gupta)

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4. ORIGINAL APPLICATION NO. 061/00589/2017

1. MES No. 504142 Sh. Puran Lal Age 61 years S/o Sh. Ganesh Dass, retired as Valveman Group 'C' C/o Garrison Engineer, Nagrota. R/o Vill. & PO-Kot, Teh Bhalwal & Distt. Jammu.
2. MES No. 504280 Sh. Sham Lal Age 59 years S/o Sh. Bhagat Ram working as Valveman C/o Garrison Engineer, Nagrota. R/o Vill-Khant, PO-Raia, Teh-Gangwal & Distt-Sambha, Jammu.
3. MES No. 50499 4Sh. Parsidh Singh Age 60 years S/o Sh. Nasib Chand retired as Valveman C/o Garrison Engineer, Nagrota. R/o Vill & PO – Nandpur, Teh-Ramgarh, Distt. Sambha, Jammu.

....Applicants

(Argued by: Shri Jagdeep Jaswal , Advocate)

Versus

1. Union of India through Secretary to Govt. of India, Ministry of Defence, South Block, New Delhi-110011.
2. Engineer-in-Chief, ENC Sec. H, Room No. 112, Integrated Head Quarter, Ministry of Defence (Army), Kashmir House, Rajaji Marg, New Delhi.
3. Chief Engineer, Headquarters, Northern Command, C/o 56 APO, Udhampur (J&K).
4. Commander Works Engineer, Jammu (J&K)..
5. Garrison Engineer, Nagrota, Jammu (J&K)..

...Respondents

(By Advocate: Shri Ram Lal Gupta)

5. ORIGINAL APPLICATION NO. 061/00912/2016

MES 359766 Madan Lal son of late Sh. Shankar Dass age 67 years retired as Pipe Fitter R/o Village Ratan Colony (Gandla Lrahi) Post Office & Tehsil Pathankot, District Pathankot (Group-C).

....Applicant

(Argued by: Shri Jagdeep Jaswal , Advocate)

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Versus

1. Union of India through Secretary to Govt. of India, Ministry of Defence, North Block, New Delhi.
2. Engineer-in-Chief, E-in-C's Branch, Army Headquarters, Kashmir House, New Delhi-110011.
3. Chief Engineer, Headquarters, Western Command, Chandimandir 908543.
4. Commander Works Engineer, Pathankot-145001
5. Garrison Engineer, (West), Pathankot 145001.

...Respondents

(By Advocate: Shri Arvind Moudgil)

6. ORIGINAL APPLICATION NO. 061/00090/2017

1. MES No. 504147 Harbans Lal S/o Sansar Chand, aged 59 years, Valveman (Group-C) at GE Nagrota, r/o Village Sutrajchak, PO Satwari, The.-Jammu, Distt. Jammu (J&K).
2. MES No. 503031 Bishan Dass S/o Sh. Buta Ram, retired as Valveman (Group- C) from the office of GE Nagrota, on 31.01.2015 and now resident of village Mehmoodpur Tehsil Bishrah Distt. Jammu.
3. MES No. 504877 Hans Raj S/o Amar Nath age 55 years, presently working as Valveman (Group C) at GE Nagrota. R/o House No.19B, Tawi Vihar, Teh & Distt. Jammu (J&K).
4. MES No. 504560 Dil Bhadur age 59 years, presently working as Valveman (Group C) at GE Nagrota r/o House No.14/1, MES Colony, Kandoli (Nagrota) Teh & Distt. Jammu (J&K).

... Applicants

(Argued by: Shri Jagdeep Jaswal , Advocate)

VERSUS

1. Union of India, through Secretary to Govt. of India, Ministry of Defence, North Block, New Delhi.

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2. Engineer-in-Chief, E-in-C,s Branch, Sec. H, Room No. 112, Integrated Head Quarter, Ministry of Defence (Army), Kashmir House, Raja Ji Marg, New Delhi.
3. Chief Engineer, Northern Command, C/o 56 APO.
4. Commander Works Engineer, Jammu.
5. Garrison Engineer, Jammu.

...Respondents

(By Advocate: Shri Ram Lal Gupta)

ORDER

SANJEEV KAUSHIK, MEMBER (J)

This order will dispose of bunch of above captioned Original Applications (OAs), which involve identical question of law and relief claimed therein and likewise is also requested by the learned counsel for the respective parties. For convenience facts are being taken from O.A. No. 060/00081/2017 titled **Bishamber Dass and**

Ors. Vs. Union of India & Ors.

2. The applicants have assailed the order dated 12.1.2017 (Annexure A-15), rejecting their claim for grant of 2nd financial upgradation under Assured Career Progression Scheme (ACP) and 3rd financial upgradation under Modified Assured Career Progression Scheme (MACP) in the pay scale of Rs.4000-6000/- (revised to grade pay of Rs.2400/-) and Rs.5200-20200 with grade pay of Rs.2800/- respectively from due dates. They have also prayed that after invalidation of impugned order, the respondents

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be directed to grant desired relief in view of various judicial pronouncements on the issue in their favour.

3. The moot question arises for our consideration in these bunch of O.As, is whether the applicants , who were appointed as Valvemen are to be treated in semi-skilled grade or in the skilled grade.

4. For better appreciation of controversy, as noticed in the preceding paragraph, it will be useful to note down few facts. Present applicants commenced their service as Mazdoors between the year 1974 to 1978. They were promoted as Valveman in the unrevised pay scale of Rs. 210-290, which is attached to the semi-skilled category. Detailed particulars of applicants with regard to their entry into service, promotions, due date for grant of 2nd ACP and 3rd MACP have been given in para 4 (b) of the O.A. The grievance, at the hands of Valveman is that they be treated in the skilled category, instead of semi skilled, and be placed in the unrevised pay scale of Rs. 260-400/- w.e.f. 16.10.1981 which was available to skilled category. In order to redress their grievance and to remove anomalies, an Expert classification Committee was constituted by the Govt. of India in terms of report of 3rd Central Pay Commission (CPC), and five scales of pay were set out vide communication dated 11.5.1983 (Annexure A-1) which were granted w.e.f. 16.10.1981. As per fitment of industrial workers in

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the MES, five categories have been mentioned vide (Annexure A-1) with different pay scale i.e. unskilled in pay scales of Rs. 196-232/-, semi skilled in the pay scale of Rs. 210-290/-, skilled in the pay scale of Rs. 260-400/-, highly skilled Grade-II in the pay scale of Rs. 330-480/- and highly skilled Grade-I in the pay scale of Rs. 380-560/- (unrevised).

5. It is stated that some of the similarly placed persons, who were working as Valveman, approached this Tribunal by filing O.A., wherein they had prayed that they be treated under the skilled category instead of semi-skilled and be granted consequential benefits, was allowed, which became subject matter before jurisdictional High Court of Jammu & Kashmir in SWP Nos. 27/2006 and 37/2001, wherein the orders of this Tribunal have been affirmed by holding that the petitioners therein be treated in the skilled grade. The matter was taken to Hon'ble Supreme Court at the hands of Union of India, while allowing the SLP vide order dated 6.10.2005, the matter was remitted back to High Court to decide it afresh. It is in furtherance thereto, the matter was again taken up where bunch of 4 LPASW Nos. 27/2006, 347/2000, 348/2000 & 37/2001 were disposed of by common judgment dated 19.8.2010 leading being one LPASW No. 27/2006 titled **Union of India and Ors. Vs. Amar Nath and Ors.** (Annexure A-2).

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6. As per averment in the O.A., it is settled issue that the Valveman category have been treated as skilled category instead of semi-skilled category and they be given the pay scale of Rs. 260-400/- . Contempt Petition was also filed i.e. Contempt (LPA) No. 5/2012 in LPASW no. 27/2006 as respondents had not implemented the order. In furtherance thereof, the appellants in the LPA were granted the pay scale of Rs.260-400/- w.e.f. 16.10.1981. It is the case of the applicants that when they were granted the pay scale of Rs. 260-400/- which was revised to 3050-4590 w.e.f. 1.1.1996, they also became entitled for grant of financial upgradations under the ACP & MACP in the pay scale of Rs 4000-6000/- after completion of 24 years of service. Applicants, to whom the grade pay of skilled category was not granted, they approached this Tribunal by filing O.A. NO. 061/00072/2015 which was disposed of vide order dated 14.9.2016, with as many as 12 O.As, with a direction to respondents to set up an Expert Committee and to ventilate the grievance of the applicants in terms of ratio laid down on the relied upon judgments. It is, thereafter, vide impugned order dated 12.1.2017 (Annexure A-15 colly), the respondents have rejected their claim to treat them under the skilled category and have also ordered to make recovery of excess amount which has wrongly been given to them. Hence these O.As.

7. The respondents, while resisting the claim of applicants have admitted that inadvertently and under a wrong notion, the benefits

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have been granted to the appellants of LPASW No. 27/2006, 347/2000, 348/2000 and 37/2001. It is their case that a wrong precedent cannot be made applicable to the similarly placed persons. It is submitted that the services of the applicants are governed under Military Engineer Services (Industrial Class-III and Class IV) Posts Recruitment Rules 1971 framed under Article 309 (for short Rules of 1971) of the Constitution of India where the post of Valveman has been categorized as semi-skilled. Thus, by no stretch of imagination the pay scale attached to skilled category can be given to the applicants who are/were working as (Valveman), which post, in fact, falls under semi-skilled category. It is also submitted that as per their entitlement, the applicants have been granted the financial up-gradations under ACP and MACP Scheme and thus the impugned order does not suffer from any infirmity and is liable to be upheld.

8. We have heard the learned counsel for the respective parties, and gone through the record with their valuable assistance.

9. Shri Jaswal, learned counsel for the applicants vehemently argued that the impugned order, rejecting the claim of the applicants for grant of skilled category Grade Pay to the category of Valveman, is not only illegal, arbitrary but also against the judicial pronouncements. To substantiate his plea, he submitted that once in the case of Amar Nath (supra), after considering letter dated

11.5.1993, it has been held by the Hon'ble High Court of Jammu and Kashmir that the Valveman is to be treated in skilled category, then the respondents are under obligation to grant the grade pay attached to the skilled category to the entire cadre of Valveman and not only to those who were before the High Court, otherwise, it would amount to discrimination amongst the equals. He also placed reliance on various judgments passed in the case of Valvemen, where the Courts while relying upon the judgment in the case of Amar Nath (Supra), have held them entitled to grade pay attached to the skilled category.

10. Per contra, Shri Gupta, learned counsel for the respondents started from where the learned counsel for applicants stopped. He argued that they no doubt when the case of Amar Nath (supra) was decided by the Hon'ble Jammu & Kashmir High Court on 19.8.2010, the case was not appropriately briefed/presented, which resulted into miscarriage of justice. He argued that it was not brought to the knowledge of the Court that service conditions of the post of Valveman, are governed under different set of rules, where in the post of Valveman has been described as semi-skilled in the pay scale of Rs.210-260/- un-revised. He further argued that even in that case, the Court of law struck down rules declaring them in skilled category, they cannot be given pay scale which is attached to skilled category. He argued that the judgment of the J&K High Court was implemented under the threat of contempt

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only, therefore, he submitted that the view taken by them, while equating their claim, is incuriam being not in consonance with the rule formation or in ignorance thereof.

11. We have given our thoughtful consideration to the entire matter.

12. Undisputedly, the service conditions of the applicants are governed by the 1971 Rules, copy of which is annexed as (Annexure R-1), where the post of Valveman has been described as Class IV, Non-Gazetted Industrial in the unrevised pay scale of Rs. 75-95, which was subsequently revised from time to time. When the applicants joined as Valveman between the years 1974 to 1978, they were granted pay scale of Rs. 210-290/- as per fitment, which was revised scale of Rs.75-95. Rules of 1971 were subsequently amended by Military Engineering Services (Industrial Group-D Posts) Recruitment Rules, 1990, wherein entry no. 6 of 1990 Rules deals with Valveman, and while declaring it as semi-skilled, it is placed in the unrevised scale of Rs. 800-1150/-. It is not denied by the learned counsel for the applicants that the post of Valveman is in the category of semi-skilled under rule formation.

13. The contention of learned counsel that once the Court of law has held that the applicants are to be treated in the skilled category, then they be given pay scale attached to that category.

However, a perusal of judgment at Annexure A-2 passed in the case of Amar Nath (supra) makes it clear that Writ Petition No. 40/1991 is based upon the judgment passed in the case of **Bhagwan Sahai Carpenter & Ors. Vs. Union of India & Anr.** AIR 1989 S.C. 1215 and finally the Hon'ble High Court has held that the law laid down in the case of Amar Nath (Supra) is not a good law. But, since sanction had been granted by the Govt. of India to implement that judgment, therefore, these Valvemen had been granted the skilled category grade of Rs. 260-400/-, who were appellants in those cases. Moreover, the relied upon letter dated 11.5. 1983 does not include the post of Valveman in the skilled category. The operative para 44 of the aforementioned judgment states that the respondents therein, who are undisputedly also performing their duties, as are assigned to skilled workers, are entitled to skilled grade of Rs. 260-400/- w.e.f. October 16, 1981, so claim was allowed in the light of principle of equal pay for equal work. There are no findings recorded by the Court that they are to be treated as skilled category. The relied upon judgment in the case of **Amar Nath and Ors.** (supra) thus would not help the applicants, at all, even if that has been upheld by the Hon'ble Supreme Court because it is settled proposition of law that if a judgment is passed in ignorance of rules or any provision of law, then it will not be treated set a precedent. At the most, it will be binding between the parties, and it cannot be applied to grant benefit to similarly placed persons. As per rule formation, different pay scales and

promotional avenues are given to the post of Valveman, which reads as under:-

- (a) Valveman in terms of conditions Appointment letter and Recruitment Rules are semi skilled in status and accordingly charter of duties are defined in (Annexure R-2) in the pay scale of Rs. 800-15-1010-EB-20-1150 (Revised to Rs. 2650-4000 under RPR-96, 5200-20200 Plus Grade pay of Rs. 1800 under RPR-2008).
- (b) On promotion as Pipe Fitter (SK) as per Recruitment Rules the pay scale fixed is Rs. 950-20-1150-EB-25-1500 (Revised to Rs. 3050-4590) under RPR -96, 5200-20200 Plus Grade pay Rs. 1900/0 under RPR 2008). The applicant has accepted the Recruitment Rules and further promotion as Pipe Fitter skilled.
- (c) On Promotion as Pipe Fitter (HS) as per Recruitment Rules the pay scale fixed is Rs. 1200-2040 (Revised to Rs. 4000-6000 under RPR -96, 5200-20200 Plus Grade Pay Rs. 2400 under RPR-2008).
- (d) On promotion as (MCM) Pipe Fitter as per Recruitment Rules the pay scale fixed is Rs. 1400-2300 (Revised to Rs. 5000-8000 under RPR-96, 9300-34800 Plus Grade Pay Rs. 4200 under RPR-2008). The maximum pay scale in hierarchy.

14. So, the claim in this O.A. is basically for determination of pay scale for the category of the applicants. The law on this issue is well settled by now. In the case of **Secretary, Finance Department v West Bengal Registration Service Association** [1993 Supp (1) SCC 153] the Hon'ble Supreme Court has held as under :-

“Ordinarily a pay structure is evolved keeping in mind several factors e.g. (i) method of recruitment, (ii) level at which recruitment is made (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v) avenues of promotion (vi) the nature of duties and responsibilities (vii) the horizontal and vertical relativities with similar jobs (viii) public dealings (ix) satisfaction level (x) employer's capacity to pay etc. We have referred to these matters in some detail only to emphasize that several factors have

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to be kept in view while evolving a pay structure and the horizontal and vertical relatives have to be carefully balanced keeping in mind the hierarchical arrangements, avenues for promotion, etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well”

“There can, therefore, be no doubt that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post and Court’s interference is absolutely necessary to undo the injustice.”

15. The main argument of the learned counsel for the applicants that the applicants would be discriminated if they are left in lurch by denying the benefits to others, in pursuance of earlier decisions, though attractive, deserves to be rejected out rightly, as the applicants have to make out their own case on merit. As discussed above, the rules in question do not admit of any higher pay scale to category of the applicants. Moreover, a negative equality is totally forbidden in law. Article 14 of the Constitution of India is not to perpetuate illegality and it does not envisage negative equalities. Merely because some persons have been granted benefit illegally or by mistake, it does not confer right upon the appellants to claim. It has so been held in numerous decisions including in the case of **State of U.P. And Ors. v. Raj Kumar Sharma and Ors.** (2006) 3 SCC 330.

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16. Thus, we find no reason to interfere with the well reasoned order dated 12.01.2017.

17. Before, parting with the order, we would consider the prayer of the applicants to restrain the respondents from effecting recovery of the amount, which they have received, while giving them the pay scale of skilled category. To our mind, the respondents have not established on record that the applicants were instrumental in misleading the respondents, while granting them the grade which is attached to the skilled category, therefore, recovery, pursuant to the impugned order, is declared as invalid. Pending M.A., if any, stands disposed of.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: June 1, 2018.

KKS