

**CENTRAL ADMINISTRATIVE TRIBUNAL
 CHANDIGARH BENCH**

...
Order reserved on:

Chandigarh, this the 1st day of June, 2018

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

...

1. ORIGINAL APPLICATION NO. 061/00195/2017

MES No. 505188 Sh. Mangal Dass s/o Kaka Ram retired on 30.11.2014, aged 63 years, presently working as Pipe Fitter under Garrison Engineer (South), Akhnoor (Group C).

....APPLICANT

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

....RESPONDENTS

(By Advocate: Shri Ram Lal Gupta)

2. ORIGINAL APPLICATION NO. 061/0088/2017

1. MES No. 507807 Sh. Ramesh Kumar Raina S/o Chuni Lal aged 52 years working as Valveman '**GROUP 'C'**', Garrison Engineer(Air Force), Jammu.
2. MES No. 508721 Prithi Pal Singh S/o Santokh Singh aged 49 years working as Valveman C/o Garrison Engineer, Kaluchak.

...Applicants

(OA No. 61/00195/2017
 OA No.61/0088/2017
 OA NO. 61/00072/2017
 OA NO. 61/00187/2017
 OA.NO.61/00184/2017
 OA No. 61/00188/2017
 O.A. NO. 61/00194/2017)

(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, Sec. H, Room No. 112, Integrated Headquarters, Ministry of Defence (Army), Raja Ji Marg, New Delhi.
3. Chief Engineer, Northern Command, C/o 56 APO.
4. Commander Works Engineer, Jammu.
5. Garrison Engineer (Air Force), Jammu.
6. Garrison Engineer, Kaluchak

...Respondents

(By Advocate: Shri Ram Lal Gupta)

3. ORIGINAL APPLICATION NO. 061/00072/2017

Subhash Chander (MES No. 508037) S/o Shiv Ram age 47 years (Group-'C') working as Valveman in the office of GE, Nagrota (J & K).

...Applicant

(Argued by: Shri Jagdeep Jaswal , Advocate)

Versus

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2. Engineer-in-Chief, E-in-C's Branch, Sec. H, Room No. 112, Integrated Headquarters, Ministry of Defence (Army), Raja Ji Marg, New Delhi.
3. Chief Engineer, Northern Command, C/o 56 APO.
4. Commander Works Engineer, Jammu.
5. Garrison Engineer, Nagrota-901208.

...Respondents

(By Advocate: Shri Ram Lal Gupta)

4. ORIGINAL APPLICATION NO. 061/00187/2017

MES No. 505475 Sh. Sarpal Chand S/o Chandu Ram, aged 55 years, presently working as Pipe Fitter under Garrison Engineer (South), Akhnoor {Group 'C'}.

...Applicant

(Argued by: Shri Jagdeep Jaswal , Advocate)

Versus

(OA No. 61/00195/2017
 OA No. 61/0088/2017
 OA NO. 61/00072/2017
 OA NO. 61/00187/2017
 OA.NO.61/00184/2017
 OA No. 61/00188/2017
 O.A. NO. 61/00194/2017)

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, 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 (South), Akhnoor (J & K) Jammu.

... Respondents

(By Advocate: Shri Ram Lal Gupta)

5. ORIGINAL APPLICATION NO. 061/00184/2017

MES No. 505468 Sh. Rajinder Kumar S/o Sh. Inder Dass, aged 58 years, presently working as Pipe Fitter under Garrison Engineer (South), Akhnoor {Group 'C'} (J & K), Jammu.

...Applicant

(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'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 (J & K)
5. Garrison Engineer (South), Akhnoor (J & K) Jammu.

... Respondents

(By Advocate: Shri Ram Lal Gupta)

6. ORIGINAL APPLICATION NO. 061/00188/2017

MES No. 504439 Sh. Harbans Lal S/o Om Parkash, aged 54 years, presently working as Pipe Fitter under Garrison Engineer (South), Akhnoor {Group 'C'} (J & K), Jammu.

...Applicant

(Argued by: Shri Jagdeep Jaswal , Advocate)

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 OA NO. 61/00187/2017
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 O.A. NO. 61/00194/2017)

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, 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 (J & K).
5. Garrison Engineer (South), Akhnoor (J & K) Jammu

... Respondents.

(By Advocate: Shri Ram Lal Gupta)

7. ORIGINAL APPLICATION NO. 061/000194/2017

MES No. 508719 Sh. Darshan Lal s/o Sh. Parbhat Dass age 53 years (Group-C) working as Pipe Fitter under GE (South) Akhnoor, Jammu (J & K).

... Applicant

(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's Branch, Sec. H, Room No. 112, Integrated Head Quarter, Ministry of Defence (Army), Raja Ji Marg, New Delhi.
3. Commander Works Engineer, Jammu.
4. Garrison Engineer (Air Force Station), Jammu J & K.
5. Garrison Engineer (South), Akhnoor, Jammu (J & K)

...Respondents

(By Advocate: Shri Ram Lal Gupta)

ORDER

SANJEEV KAUSHIK, MEMBER (J)

This order will dispose of a bunch of 7 above captioned Original Applications (O.As.), which involve identical question of

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law and relief claimed therein, and likewise is also requested by the learned counsel for the respective parties. For convenience, the facts are being taken from the case of **Mangal Dass Vs. UOI etc.** (O.A. No. 061/00195/2017).

2. The applicant has assailed the order dated 13.1.2017 (Annexure A-10) whereby his claim for grant of 2nd financial upgradation under Assured Career Progression Scheme (ACP) and 3rd financial upgradation under Modified Assured Career Progression (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/- from due date has been rejected. It is prayed that after invalidation of the impugned order, the respondents be directed to grant the desired relief in view of various judicial pronouncements on the issue in his favour.

3. The solitary issue, that arose for our consideration, is as to whether the post of Valveman is a “semi-skilled” category and entitled to scale meant for it in the Recruitment Rules or it is to be treated as “skilled” category entitled to higher pay scale.

4. For better appreciation of controversy, as noticed in the preceding paragraph, it will be useful to note down few facts.

5. Applicant commenced his service as Mazdoor on 27.11.1981. He was promoted as Valveman on 27.11.1987 in the pay scale of Rs. 210-290/- . It is the case of the applicant that prior to 3rd Central Pay Commission (CPC) recommendations, there were two categories of employees working in Military Engineering Service (MES) i.e. skilled and unskilled and they were getting common grade of Rs. 210-290/- . As per recommendations made by 3rd CPC to remove the anomalies, an Expert Classification Committee was constituted by the Govt. of India and on the basis of its recommendations, Ministry of Defence, vide its communication dated 11.5.1983 conveyed its sanction that semi skilled category will be granted the pay scale of Rs. 210-290/- and skilled category will be given the pay scale of Rs. 260-400/- w.e.f. 16.10.1981.

6. It is not denied by the applicant that the post of Valveman admittedly falls in semi-skilled category. Thirty five persons including Amar Nath who were similarly placed persons like the applicant and were working as Valvemen approached the Hon'ble Jammu & Kashmir High Court by filing Writ Petition No. 1393/1994 claiming equal pay for equal work as they were performing same duties, as were being performed by skilled category employees. The said writ Petition was allowed vide judgment dated 12.3.1997, which became subject matter in LPA before the High Court, which was also dismissed on 3.3.1997. The said decision was taken to Hon'ble Supreme Court by the Govt. of

India where Lordships allowed **Civil Appeal No.5825/2000** vide judgment dated 06.10.2005 by setting aside the judgment passed by the High Court and remitted the matter back to the High Court for fresh adjudication in the light of the decision in the case of **Bhagwan Sahai Vs. UOI** reported in AIR 1989 SC 1215.

7. Pending SLP before the Hon'ble Supreme Court, other matters, which were also pending before jurisdictional High Court, in appeals were also decided by a common order dated 19.08.2010 leading case being LPASW No.27/2006 titled as **UOI & Ors. Vs. Amar Nath & Ors.** After the decision in the case of Amar Nath (supra), the applicants raised a plea that once, as per the judgment of High Court, the category of Valve men is to be treated under the Skilled category and granted pay scale of Rs.260-400/- as admissible to a skilled category, then even the applicants as well as similarly placed persons be also granted other financial up gradation under ACP and MACPS. Some of the applicants in connected matters, to whom the grade pay was not granted, despite being working as Valve man, they approached this Tribunal by filing **OA No.061/0072/2015**, which was disposed of vide order dated 14.09.2016, with as many as 12 applications, with a direction to respondents to set up an Expert-Committee to ventilate the grievance of the applicants therein, in terms of ratio laid down on the relied upon judgment. It is thereafter that the respondents have rejected their claim. Hence, the present OA.

8. We have heard Mr. Jagdeep Jaswal, learned counsel for applicants and Mr. Ram Lal Gupta, learned counsel for respondents and have perused the material available on record.

9. Shri Jagdeep Jaswal, learned counsel for the applicants, in furtherance to the above plea for invalidation of the impugned order, vehemently argued that once in terms of ratio laid down in the case of Amar Nath (supra), it has been held by the High Court that the Valveman, is to be treated under the Skilled category, then the respondents are under obligation to grant the grade pay attached to the Skilled category to the entire category of Valveman and not only to those who were parties before the Court, otherwise, it would amount to discrimination amongst the equal. He then urged that once the decision in the case of Amar Nath case (supra) has attained finality, then the respondents cannot be allowed to reopen the entire matter and raise an argument that left ut category cannot be treated under the Skilled category. Therefore, he prayed that the impugned order be quashed and set aside and the respondents be directed to treat the category of Valveman in Skilled category and grant them the grade pay, which is attached to Skilled category, and then grant them consequential benefits and revision of pay accordingly.

10. Respondents, while resisting the claim of the applicants, have admitted this fact that under a wrong notion, the benefit in the

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case of Amar Nath (supra) was made available to applicants therein. But, since the case was not decided, after considering the rule formation, as such, said decision cannot be applied to other cases filed by the similarly placed persons. It is urged that the post of Valveman has been categorized under the semi-skilled category since 1971, thus in absence of challenge to service rules or amendment thereto, the category of Valveman cannot be upgraded.

11. Mr. Ram Lal Gupta, learned counsel appearing on behalf of respondents vehemently opposed the arguments raised by the learned counsel for applicant and argued that the judgment in the case of Amar Nath (supra) dated 19.8.2010 cannot be said to be conclusive law on the issue, as such, the benefit of that judgment cannot be extended to similarly placed persons as judgment is per incuriam. To substantiate his plea, he urged that in case of Amar Nath (supra) the plea was for grant of equal pay for equal work which was allowed, based upon the judgment in the case of Bhagwan Sahai (supra), holding that there cannot be any discrimination in pay scale in a single category. Therefore, he submitted that since under the relevant service rules, the post of Valveman has been categorized as semi skilled, then it cannot be equated with skilled category employees. Thus, he prayed that the O.A. be dismissed and their view be upheld.

12. We have given our thoughtful consideration to the entire matter and have perused the pleadings available on record.

13. To finally decide the controversy, firstly we have to unfold as to whether the post of Valveman falls under the category of semi-skilled or skilled category. Undisputedly, the service conditions of applicants are governed by Rules known as Military Engineering Services Industrial Class III and Class IV posts, Recruitment Rules, 1971 framed under Article 309 of Constitution of India, where in the post of Valveman has been placed in the pay scale of Rs. 75-95 (unrevised). These Rules were subsequently repealed by another set of Rules in the year 1990 where the post of Valveman was declared as semi skilled and was placed in the pay scale of Rs. 800-1150/- which is a revised scale of Rs. 75-95 (unrevised). As per 1971 Rules, there are specific duties entrusted to Valveman and the promotional post of Valveman is also given, copy of which has been annexed as Annexures R-1 and R-2. Thus, it can be recorded here that the post of Valveman is governed under specific statutory Rules framed under Article 309 of the Constitution of India wherein they were categorized as semi skilled employees.

14. Trouble started when the applicants in the case of Amar Nath (supra) were granted the status of skilled category and were held entitled to the grade pay attached to that post i.e. Rs. 260-400/- which was based upon Writ Petition No. 49/1991 decided on

31.7.1991 titled **Association of Engineers Moradnagar Ordinance**

Factory Vs. Union of India & Ors. which was further based upon the decision rendered in the case of Bhagwan Sahai (supra). Relying upon the judgment in the case of Amar Nath (supra), the Valveman approached the Court of law for grant of skilled category grade pay and which were also allowed, as the judgment in the case of Amar Nath was not challenged and had attained finality. Perusal of the judgment in the case of Amar Nath, copy of which has been annexed as Annexure A-2, leaves no manner of doubt, as projected by the respondents, that it was based upon the judgment in the case of Bhagwan Sahai's case (supra) where the plea of equal pay for equal work was projected and it was held therein that there cannot be any discrimination amongst a class, while granting pay. Since in case of Bhagwan Sahai, all the applicants were in a particular category, therefore, they could not be left out for grant of pay scale. Therefore, the Court held that they be also granted the pay scale, which was granted to other category of persons, on the ground of discrimination. In the case of Amar Nath case (supra), it was not brought to the notice of the Court that the post of Valveman is governed under a separate and specific set of rules from the very inception and they were treated as semi skilled category and were granted pay scale of Rs. 210-290/- and the pay scale of Rs. 260-400/- was available on promotion only.

15. Considering the decision in the case of Association of Engineers Moradnnagar Ordinance Factory (supra) where also the rules were not brought to notice of Hon'ble Supreme Court and only based upon the judgment in the case of Bhagwan Sahai, petitioners therein were held entitled to skilled category grade of Rs. 260-400 instead of Rs. 210-290. In the case of Amar Nath (supra), the jurisdictional High Court solely placed reliance upon the judgment in the case of Bhagwan Sahai and was not obliged to consider the rule formation or same were not brought to its notice wherein the post of Valveman has been categorized under the semi skilled category.

16. Thus, we are in agreement with the submissions made at the hands of respondents that decision in the case of Amar Nath case (supra) is to be read as per incuriam and cannot be relied upon for grant of similar relief. By considering the specific service rules where in the post of Valveman has been categorized as 'semi-skilled', the applicants cannot be granted the pay scale which is attached to a promotional post of skilled category.

17. Apparently, 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 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.”

18. 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.

19. 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. Having regard to the peculiar facts of this case and the law laid down by Hon'ble Apex Court on determination of pay scales, we do not find any fault with the view taken by the respondents, while rejecting their claim for grant of ACP and MACP in the higher pay scale.

20. In view of the aforesaid discussion, all the above mentioned seven O.As are dismissed. However, we make it clear that the respondents are restrained from effecting recovery of the amounts, which they have already been paid in good faith, while granting the higher pay scale attached to semi-skilled category. Pending M.A, if any, also stand disposed of. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 1st June, 2018.

SK/KKS