

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No. 314 of 2012

Jabalpur, this Tuesday, the 28th day of August, 2018

HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER

1. Vinod Kumar Khare, Aged-47 years, S/o Late Shri C.B.Khare, R/o 108-B, Nainagiri, J.K.Road, Bhopal (M.P.), Pin No. 462023
2. Sanjay Dave, Aged-44 years, S/o Shri M.C.Dave, Flat No. 101,Block- 'B', Sagaur Royal Vilash, Hoshangabad Road, Bhopal (M.P.), Pin No. 462001
3. Anil Shrivastava, Aged-48 years, S/o Shri C.P.Shrivastava, R/o E-8/274, Trilanga Colony, Bhopal (M.P.), Pin No. 462039
4. R.R.Jha, Aged-49 years, S/o Late Shri R.D.Jha, R/o 14, Rameshwaram Extension, Bagh Vigaliya, Bhopal (M.P.), Pin No. 462043
5. A.K.Babele, Aged-49 years, S/o Shri L.N.Babele, R/o 28, Avinas Nagar, Barkhera Pathani, Bhopal (M.P.),Pin NO. 462043
6. S.K.Khare, Aged-49 years, S/o Late Shri Chhail Behari Lal Khare, R/o RB-III, 178-A, Ground floor, Khajanchi Bagh, East Railway Colony, Bhopal (M.P.), Pin No. 462010

-Applicants

(By Advocate –**Shri K.N.Pethia**)

V e r s u s

1. Union of India, through Secretary, Ministry of Railway, Rail Bhawan, New Delhi, Pin No.-110001
2. SPO (Constn.)/Chief Personnel Officer, CSTM, CAO's Office, 6th Floor, New Administration Building, D.N.Road, CST, Mumbai(M.S.),Pin-400001

3. The Chief Personnel Officer, West Central Railway,
Jabalpur (M.P.), Pin-482001

-Respondents

(By Advocate –S/Shri N.S.Ruprah & Sapan Usrathe)

ORDER

By Navin Tandon, AM.-

The applicants have preferred the present Original Application claiming following reliefs:

“8. Relief(s) Sought

In these circumstances, it be held that the applicants are similarly situated employees and entitled to benefit of the orders passed in O.A.No.1443/1995, CWP No.2043/2000 (Hon’ble High Court of Delhi) and order passed by the Hon’ble Supreme Court in CC No. 3969/2011 and grant the following reliefs:-

- (i) the respondents be directed to extend the similar benefits to the applicants as has been extended to the applicants of O.A.No.1443/1995 by passing the order dated 6.5.2011 (Annexure A-4) ;*
- (ii) The respondents be directed to extend the benefit of fixation of pay in the scale of Rs.1400-2300 and its revised pay scale time to time, to the applicants w.e.f. 1.1.1986;*
- (iii) The respondents be directed to grant actual monetary benefits including the arrears and difference of wages from 1.8.1995 till today and onwards;*
- (iv) Since the benefit has been illegally curtailed to the present applicants, therefore, interest be granted on the aforesaid monetary benefits at the rate of 18% per annum and cost of the original application quantified Rs.50,000/- be also granted;*
- (v) Any other appropriate writ, order or direction which this Hon’ble Tribunal may deem fit and proper under the facts and circumstances of the case be also issued.*

2. By way of Misc. Application No.200/00899/2017 the applicants have submitted that due to inadvertence and oversight the prayer for quashment of impugned orders could not be made, however, description

of the impugned orders in the prescribed column/para 1 of the Original Application, has been given and the same have also been marked as Annexure A-9 dated 16.8.2011 and Annexure A-10 dated 18.1.2012.

Accordingly they have also sought for the following relief:

“8(vi) It is, therefore, further prayed that this Hon’ble Tribunal be also pleased to quash the impugned orders dated 16.8.2011 (Annexure A-9) and order dated 18.1.2012 (Annexure A-10) in the interest of justice.”

2.1 The respondents by filing their reply to aforementioned Misc. Application No.200/00899/2017 have objected to the amendment and have prayed for dismissal of said Misc. Application.

2.2 Considered the issue. Allowing the amendment, as prayed for by the applicants, will not change the basic nature of the Original Application. Hence, the prayer to add Para 8(vi) in relief is allowed.

3. In nutshell, the applicants have prayed for fixation of their pay in pay scale of Rs.1400-2300 with effect from 01.01.1986 and extension of similar benefits as has been granted to the applicants before the Principal Bench of this Tribunal in Original Application No.1443/1995 (**Manoj Kumar Srivastava & 15 others Vs. Union of India and others**), decided on 26.10.1999 (Annexure A-1).

4. At the outset we may observe that this matter/OA was earlier allowed by this Tribunal vide common order dated 26.09.2014 along with OA No.377/2012 (**Arun Kumar Agrawal Vs. Union of India & ors**).

The respondent-North Central Railway in OA No.377/2012 have already implemented the said common order in respect of the applicant in OA 377/2012 and granted him all the benefits (Annexure A-18) at par with **Manoj Kumar Shrivastava** (supra). Whereas the respondent-West Central Railway in the instant case had filed WP No.11637/2015 before Hon'ble High Court of MP and vide order dated 29.07.2015 the Hon'ble High Court set aside the order dated 26.09.2014 passed by the Tribunal, and ordered for restoration of this OA to its original number. Relevant paragraphs of the said order read thus:

“(3) This petition takes exception to the decision of the Central Administrative Tribunal, Jabalpur Bench, Jabalpur dated 26.09.2014 in O.A. Nos.314 & 377 of 2012. In the impugned decision, the Tribunal following the decision of the Principal Bench in the case of Manoj Kumar Shrivastava and others Vs. Union of India and others O.A.No.1443/199, decided on 26.10.1999, allowed the original applications filed by the respondents on the finding that the respondents/original applicants were similarly placed. That fact recorded by the Tribunal is not disputed by the Department except to the extent that said Manoj Kumar Shrivastava was assigned duties of IOW. In the context of this plea, the Tribunal has observed that the respondents/ original applicants were also appointed on Daily Wages to assist IOWs as was the case of Manoj Kumar Shrivastava. The Tribunal then proceeded to observe that the fact that no duties of IOW were assigned to the respondents/original applicants was of no consequence.

(4). Even if this finding recorded by the Tribunal is to be accepted, the moot question that ought to have been considered by the Tribunal in the context of express plea taken by the petitioner/Department in the reply-affidavit is: whether the decision of the Expert Committee dated 29.06.1998 would bind the respondents and unless that decision was successfully challenged, no relief can be granted to the respondents. The claim of the respondents was considered by the Expert Committee regarding

the pay scale pursuant to the direction issued by the Tribunal in OA No.325/1994 decided on 17.12.1997, which was filed by the respondents/original applicants. The respondents have acquiesced of the said decision of the Expert Committee, which fixed the pay scale of the respondents at Rs.950-1500 (RPS), which is applicable to Casual Artisans Grade-III as well as Regular Artisans Skill Grade-III being applicable to the respondents/original applications, no relief could be granted to the respondents/original applicants, as prayed in the original application.

(5). In the original application, the relief claimed by the respondents was to extend similar pay scale as given to Manoj Kumar Shrivastava in O.A. No.1443/1995 vide order dated 06.05.2011. The Department, however, in the case of the respondents in peculiar facts of the present case, nevertheless following the principles underlying the decision in the case of Manoj Kumar Shrivastava extended the benefit to the respondents/original applicants w.e.f. 13.11.2003. The respondents are insisting for the same benefit w.e.f. 01.01.1986 as is given to Manoj Kumar Shrivastava, but as aforesaid, according to the petitioner-Department unless the decisions of the Expert Committee dated 29.06.1998, which has been acted upon by all concerned against the respondents/original applicants was to be overturned, no relief can be granted to the respondents. These are also matters, which the Tribunal should have examined, on its own merits, including whether the relief now claimed by the applicants would also become time barred. The Tribunal should have addressed itself to the specific plea taken by the petitioner-Department in the reply affidavit in this behalf.

(6). As a result, we deem it appropriate to quash and set aside the order passed by the Tribunal and instead relegate the parties before the Central Administrative Tribunal for reconsideration of the matter, on its own merits, in accordance with law.

(7). We make it clear that we are not expressing any opinion on the merits of the controversy, which requires to be considered by the Tribunal. That will have to be decided afresh”.

4.1 The applicants filed Review Petition No.559/2015, which was disposed of by Hon’ble High Court of Madhya Pradesh vide order dated 09.10.2015 without providing any relief. It also said that the Tribunal may consider everything fresh as all questions are open.

5. The applicants filed their rejoinder on 17.11.2015 in view of the orders passed by Hon'ble High Court in W.P. 11637/2015, enclosing therein Annexures A-11 to A-19.

5.1 The respondents have also filed additional return on 01.12.2017 and an application (Misc. Application No.200/00878/2017) for taking documents on record, wherein copy of the common order dated 18.12.2014 by coordinate Bench at Mumbai of this Tribunal in OAs. Nos.326/2011 and 333/2011 has been filed.

6. Heard the learned counsel of both sides and carefully perused the pleadings of the respective parties and the documents annexed therewith. We have also carefully perused various decisions referred by both the parties.

7. This case has a chequered long history of about three decades. The applicants were appointed as casual labourers (High Skilled Technical Mistry) in 1980s. They are Diploma holders in Civil Engineering. Though the applicants claim that they were appointed against the vacancies of the Inspector of Works (IOW), the respondents refute the same and submit that they were to technically assist IOWs. The applicants as well as similarly placed persons have been approaching this Tribunal and Hon'ble Apex Court on various issues regarding prayer for non-termination of services, regularization, fixation of pay etc.

7.1 Initially Writ Petition No.965/1988 (Manoj Kumar Shrivastava & 17 others) was filed before the Hon'ble Supreme Court. The present applicants had also approached the Hon'ble Supreme Court by filing WP No.1198/1988 apprehending termination. Both these Writ Petitions were disposed of vide common judgment dated 03.05.1989, as the respondent-railways had agreed that the petitioners would be given opportunity to appear before Railway Recruitment Board for their selection to posts in accordance with their suitability and qualification.

7.2 Thereafter, Original Application No.398/1995 (**G.S.Kushwaha & others Vs. Union of India and others**) was filed before this Tribunal, regarding their regularization, which was decided vide order dated 29.02.1996 (Annexure A-14) directing the respondents to constitute a screening committee for considering the case of the applicants in the said case for regularization, as has been done by the South Eastern Railway, on account of failure of the respondent-railways to comply with the above direction of the Hon'ble Supreme Court. After the said order the applicants of the said case were regularized by holding internal written test and viva voce.

7.3 Another Original Application No.1443/1995 was filed by Manoj Kumar Shrivastava, Gyanendra Singh Kushwah & 14 others before the Principal Bench of this Tribunal, which was allowed vide order dated 26.10.1999 (Annexure A-1) with the following directions:

*“(1) The applicants are entitled to notional benefit of fixation of pay in the scale of Rs.1400-2300 from 1.1.1986.
(2) The applicants are granted actual monetary benefits including the arrears only from 1.8.1995 till today and onwards”*

7.4 WP No.2041/2000 filed by the Union of India against the said order dated 26.10.1999 passed in OA No.1443/1995 was dismissed by Hon’ble High Court of Delhi vide order dated 10.08.2010 (Annexure A-2) in the following terms:

“Therefore there is no impediment in the grant of scale of pay of Rs.1400-2300 to the private Respondent w.e.f. 01.1.1986 or if they have been granted temporary status on a later date, then from such later date.”

7.5 Against the above order passed in WP No.2041/2000, SLP No.3969/2000 filed by the Railways, was also dismissed by the Hon’ble Supreme Court vide order dated 18.03.2011 (Annexure A-3).

7.6 Meanwhile, due to reorganization of Railways in 2002-2003, some of the applicants in the said OA got absorbed in North Central Railway and West Central Railway respectively. Thereafter, the Central Railway vide its order dated 06.05.2011 (Annexure A-4) directed the General Managers of both North Central Railway, Allahabad and West Central Railway Jabalpur to comply with the judgment dated 26.10.1999 & 10.08.2010 of CAT/Principal Bench & of Hon’ble High Court of Delhi respectively, in the following terms:

“The subject case has been examined and it has been decided by the competent authority to comply with the judgments dated 26.10.1999 and 10.8.2010 of Hon’ble CAT(PB) NDLS and Hon’ble High Court, NDLS respectively”.

8. In the meantime the present applicants also filed OA No.325/1994 (Vinod Kumar Khare & 6 others Vs. Union of India & 3 others) before this Tribunal, which was decided on 17.12.1997 (Annexure A-11/ R-5) with a direction to the respondents to constitute an expert committee to decide whether applicants should be given the pay scale as claimed by them or the pay scale as is being drawn by similarly placed persons in other divisions. Thereafter the respondents constituted an Expert Committee, which recommended vide its report dated 29.06.1998 (Annexure R-1) that the applicants are entitled for Grade Rs.950-1500. The applicants have stated that the said decision of the Expert Committee had never been made operative.

8.1 Thereafter the applicants filed OA No.352/1997 and similarly placed persons also filed OA No.379/1997(Pramod Kumar Verma & ors Vs. UOI & ors) and OA No.452/1997 (Santosh Kumar Khare Vs. UOI & ors). These OAs were disposed of vide common order dated 10.03.1998 (Annexure A-15) with a direction to the respondents to treat the applicants in the same manner as has been done in the matter of regularization of applicants in the matter of **G.S.Kushwaha** (supra)

8.2. Against the said order the respondents-Railways filed Writ Petitions before Hon'ble High Court of Madhya Pradesh, which were decided vide order dated 30.10.2012 (Annexure A-12) with an observation that in case where the applicant is not at par with that of Gynendra Singh Kushwaha, the Railway administration after giving an opportunity of hearing to said applicant may pass another order. In the said matter the Hon'ble High Court further observed that "we hope and trust that the Railway Administration being one of the major and important employer in a welfare state would not deviate from the path of equality and not create any deviancy causing a concavity in the administration or dispensation of justice. The Railway administration is expected to behave like a model employer". The SLPs Nos.14396-14398/2003 filed against the aforesaid order of the Hon'ble High Court were also dismissed vide order dated 29.08.2003 (Annexure A-13).

8.3 In compliance with the aforesaid orders, the respondents passed an order dated 13/14.11.2003 (Annexure AR-1) granting the pay scale of Rs.1400-2300 (Rs5000-8000) to the applicants with effect from date of passing of the order dated 13/14.11.2003.

9. The present applicants in the meantime had also filed OA No.301/2000 before the Principal Bench of this Tribunal, which was disposed of vide order dated 29.10.2010 (Annexure A-5) with direction to the respondents to grant the same benefits as **Manoj Kumar Shrivastava**

and others in OA No.1443/1995 after examination of the case of the applicants or else pass a speaking order. In compliance with the said directions, the respondents have now passed the impugned orders dated 16.08.2011(Annexure A-9) and 18.01.2012 (Annexure A-10) rejecting the claim of the applicants.

10. The short issue involved in this OA is whether the respondents have rightly granted the benefit of pay scale of Rs.5000-8000 with effect from 14.11.2003 in compliance with the direction of this Tribunal dated 10.03.1998 which was affirmed by the Hon'ble High Court as well as by the Hon'ble Supreme Court, or the applicants are still entitled to be regularized w.e.f. 1.1.1986 and granted actual monetary benefits w.e.f. 1.8.1995 as has been granted to similarly placed above mentioned persons **Manoj Kumar Shrivastava and G.S.Kushwaha and others.**

11. We find that the Hon'ble High Court of Madhya Pradesh in order dated 30.10.2002 (Annexure A-12) has clearly held in para 8 of the order as under:

“(8).……It is not disputed by Mr.Gupta that the present applicants are similarly placed with Gyanendra Singh Kushwaha and nine others who have been regularized. True it is, initially and edifice was built by Mr.Gupta that said regularization has been taken place because of the threat of the content of the non-applicant and the principle of equality was made the bedrock which initially looked quite sound and attractive but on a deeper scrutiny the same melts into insignificance inasmuch as Gyanendra Singh Kushwaha and others were treated at par with certain employees under the South Eastern Railway and the present applicants having similarly placed with Gyanendra Singh Kushwaha and others, by application of

principles of inference it becomes graphically clear that they are in the same post held by the employees in the South Eastern Railways and hence the concept of negative equality is not applicable. **Thus, the benefit which was extended to Gyanendra Singh Kushwaha and others is also to be extended to the applicants.** It is not disputed that Gyanendra Singh Kushwaha and nine others were placed in daily wages and thereafter conferred the benefit of monthly rate. It is also not in dispute that Gyanendra Singh Kushwaha had also approached the Apex Court. If they are equal in all facets we do not perceive any fallacy that has created any kind of dent in the order of the Tribunal”.

(emphasis supplied by us)

11.1 In the aforementioned case the Hon’ble High Court has clearly found that there was positive discrimination, and the benefit which was extended to Gynendra Singh Kushwaha and others is also to be extended to the applicants.

12. We further find that while implementing the orders of the Principal Bench of the Tribunal dated 29.10.2010 passed in OA No.301/2000, the respondent-Railway had totally ignored the observations made by the Hon’ble High Court in order dated 30.10.2002 (Annexure A-12) to the effect that the benefit which was extended to Gyanendra Singh Kushwaha and others is also to be extended to the applicants.

13. The contention of the learned counsel for the applicant is that after the decision in the matter of **Manoj Kumar Srivastava** (supra) the applicants had filed Original Application No.301 of 2000 before the Principal Bench of this Tribunal stating their claim of parity. The said Original Application No. 301/2000 was disposed of by the Principal

Bench vide order dated 29.10.2010 (Annexure A-5) with the following directions:

“(3). The OA is disposed of with direction to the respondents to examine the relief prayed for by the Applicant in the present OA keeping in view the directions issued by the Hon’ble High Court in CWP No.2041/2000. The benefits of the referred judgment of Hon’ble High Court of Delhi would be extended to the Applicant after appropriate examination of the applicability of the judgment in the case. In case the same is not allowed a speaking and reasoned order will be issued under intimation to the applicant”.

13.1 In compliance of the direction of the Principal Bench the respondents have passed impugned order dated 16.8.2011 (Annexure A-9) wherein the applicants’ representations have been rejected on the following grounds:

- “(1) You were engaged as HSTM on casual basis on daily wages @ Rs.18.75/-.
- (2) You were granted temporary status after completion of 360 days of working and granted monthly rate of pay Rs.950-1500 (RPS).
- (3) You were assisting the IOW in their day to day work.
- (4) You were never recruited or promoted as SOM II or posted as SOM or granted the grade of pay of SOM II or SOM.
- (5) You were never assigned the specific supervisory duties of IOW and you were only assisting the IOW, PWI and CDM’s in discharging their duties.
- (6) The post of IOW.III is a direct recruitment post to be filled as under at the relevant time.
 - (a) 75% by selection through RRB.
 - (b) 25% by promotion by selection of work Mistries in the scale Rs. 1400-2300(RPS) as per para 145 of IREM.
- (7) You were never selected through RRB or promoted against 25% promotion quota as you were all along working as HSTMs in the temporary status and hence not eligible for the posting as IOW and its grade.

(8) Unlike the applicants in OA No.1443/95 before CAT (PB) NDLS, you never carried out the duties of IOW and no letter was issued in your favour.

(9) The Railway Board's letter dated 2.1.87 is applicable to in service Mistries in the pre-revised grade Rs. 330-560 with special pay of Rs.35.

(10) You were never working or promoted or posted as SOM. II or SOM in the pre-revised grade 330-560 with special pay Rs.35/- and were never performing the duties of SOM. Hence, the Railway Board's letter dated 2.1.87 is not applicable to you.

(11) You were all along working as casual HSTM and were never holding any post on a substantive basis and hence not entitled to claim parity with regular and permanent staff.

(12) While granting temporary status, inadvertently and mistakenly you were given the scale of Rs. 1200-1800 (RPS) whereas you ought to have been the scale of Rs. 950-1500(RPS) applicable to the artisans.

(13) Pursuant to the order dated 17.12.1997 by CAT, Jabalpur in OA No. 325 of 1994 in the case of Shri V.K.Khare versus Union of India, the expert committee so formed also recommended the scale of Rs.950-1500 (RPS) only as applicable to the artisans.

(14) The Hon'ble Supreme Court in the order dated 18.3.2011 as stated above has not decided the SLP on merit and has left the question of law open. Thus, there is no legal finality on the issue and the order of CAT and of the High Court granting scale of Rs.1400-2300 (RPS) is not the final adjudication of the matter.

Taking into account the facts and the law, the benefit granted by the CAT (PB) Delhi and the High Court to the applicants in OA no.1443/95 is specific to them cannot be extended to you".

14. Let us first deal with the issues raised by the respondents that the present Original Application is barred by *res judicata*. The applicants had earlier filed Original Application No.325/1994 claiming pay scale of Rs.1320-2040, which was disposed of vide order dated 17.12.1997 (Annexure A-11) by directing the respondents to constitute an Expert Committee to decide whether the applicants should be given the pay scale as claimed by them or the pay scale as is being drawn by similarly placed

persons in other divisions. In compliance to said order the respondents had constituted an Expert Committee which recommended on 29.06.1998 (Annexure R-1) that the applicants are entitled for grade Rs.950-1500. However, the respondents have failed to show that the recommendations of said Expert Committee had ever been implemented. The recommendations were neither accepted by the competent authority nor circulated for taking necessary action by all concerned. Moreover, the respondents never brought these recommendations to the notice of Principal Bench of this Tribunal when orders were passed on 26.10.1999 (Annexure A-1) in OA No.1443/1995, when case of Manoj Kumar Shrivastava was adjudicated. Therefore, it would be safe to say that the respondents did not take the orders of this Tribunal in OA No.325/1994 seriously and did not take it to the logical conclusion.

15. Taking the logic further, as the recommendation of the Expert Committee was neither accepted nor executed by the respondent department themselves question of challenging the same by the applicants does not arise.

16. Since the orders of this Tribunal in OA No.325/1994 have not been implemented by the respondent-department, it would not be appropriate for them to raise the issue of res-judicata at this stage. Hence, we reject the claim of the respondents that the matter is hit by the principle of res judicata.

17. Further, since it has already been shown above that the recommendation of the Expert Committee was never implemented, question of whether the applicants have acquiesced to the said decision (nee recommendation) does not arise.

18. The issue of limitation in terms of delay has also been raised by the respondent-department. It is seen that the services of the applicants were regularized vide orders dated 13/14.11.2003 (Annexure AR/1) wherein they have been granted pay scale of Rs.5000-8000 (RSRP) against 75% direct recruitment quota with immediate effect. However, the claim of the respondents is that the applicants have approached this Tribunal in March 2012, and hence is time barred.

19. It has been brought to our notice that the applicants had filed OA No.301/2000 (**Shri Anil Kumar Agrawal & 7 others Vs. The Secretary, Ministry of Railways & others**) in Principal Bench of this Tribunal wherein following orders were passed on 29.10.2010 (Annexure A-5):

“(3). The OA is disposed of with direction to the respondents to examine the relief prayed for by the Applicant in the present OA keeping in view the directions issued by the Hon’ble High Court in CWP No.2041/2000. The benefits of the referred judgment of Hon’ble High Court of Delhi would be extended to the Applicant after appropriate examination of the applicability of the judgment in the case. In case the same is not allowed a speaking and reasoned order will be issued under intimation to the Applicant”.

20. In pursuance of orders passed in OA No.301/2000 of Principal Bench of this Tribunal, the respondent-department issued speaking orders dated 16.08.2011 (Annexure A-9), thereby rejecting the claim of the applicants. Aggrieved by these orders, the present OA has been filed. It is very clear that there are no delays involved. Hence, the objection of the respondents regarding limitation has no force and is accordingly rejected.

21. As regards the merits of the matter, it would be pertinent to mention that in the present OA, Respondents Nos.2 & 3 are Central Railway (CR) and West Central Railway (WCR) respectively. The reply was filed by CR. An application was also made by respondents to delete the name of WCR from the cause title. However, the applicants objected to the prayer to delete WCR as the applicants are working in WCR and the OA, if successful, has to be implemented by WCR. After a common order was passed on 26.09.2014 in this OA as well as in OA 377/2012, it was decided by the competent authority in CR to implement the said orders and was communicated as such to NCR and WCR on 30.12.2014 and 17.12.2014 respectively. NCR has implemented the order of the Tribunal on 17.03.2015. These communications were collectively filed as Annexure A-18. However, the order of this Tribunal in OA No.314/2012 has been challenged in Hon'ble High Court of Madhya Pradesh.

22. We have carefully perused the order passed by the Principal Bench of this Tribunal in the matters of **Manoj Kumar Shrivastava** (supra) and

found that the said case relates to 16 Highly Skilled Technical Mistries at Gwalior, who were appointed on daily wages to assist the IOWs in their work. We also find that most of the arguments, advanced by the respondents in the present Original Applications, as well as raised in the impugned order, for rejecting the claim of the applicants, have already been considered and negated by the Principal Bench in its order dated 26.10.1999. The Principal Bench, in the said matter observed that since employees were already given temporary status and were placed in the pay scale of Rs.1200-2040 at that time, in view of the recommendations of 4th pay commission, and other relevant material placed before the Bench, the applicants therein were held to be entitled to be placed in the pay scale of Rs.1400-2300 in place of Rs.1200-2040. The aforesaid order of the Principal Bench was challenged by the respondents before the Hon'ble High Court of Delhi in CWP No.2041/2000 and vide order dated 10.08.2010, the order of the Principal Bench has been upheld. The SLP No.3969/2011 filed against the order of the Hon'ble Delhi High Court has also been dismissed by the Hon'ble Supreme Court vide order dated 18.03.2011.

23. We further find that the Hon'ble High Court of Madhya Pradesh in order dated 30.10.2002 (Annexure A-12) has clearly held in para 8 of the order that **“the benefit which was extended to Gyanendra Singh Kushwaha and others is also to be extended to the applicants”**, as

Gyanendra Singh Kushwaha and nine others were also placed in daily wages and thereafter conferred the benefit of monthly rate. Thus, we do not find any justification for rejecting the claims of the applicants by the respondents who are similarly placed as the applicants in the matters of **Manoj Kumar Shrivastava** (supra) and **Gyanendra Singh Kushwaha** (supra).

24. Accordingly, the Original Application is allowed. The impugned orders passed by the respondents are quashed and set aside. The respondents are directed to grant notional benefit of fixation of pay in the scale of Rs.1400-2300 w.e.f. 01.01.1986 or from date of grant of temporary status which ever is later. The actual monetary benefits including the arrears may be paid only from the date of filing of OA No.301/2000 in Principal Bench of this Tribunal, within a period of 90(ninety) days from the date of communication of this order. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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