

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

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- I. **OA No.61/89/2017 & M.A. No.61/661/2018**
- II. **OA No.61/196/2017 & M.A. No.61/663/2018**
- III. **O.A. No.61/197/2017 & M.A. No.61/662/2018**
- IV. **OA No.61/221/2017**
- V. **OA No.61/595/2017 & M.A. No.61/719/2018**

Date of decision: 05.10.2018

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. AJANTA DAYALAN, MEMBER (A).**

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I. OA No.61/89/2017

1. MES No.502612, Sh. Bachan Lal, S/o Thoru Ram, aged 64 years, resident of House No.164/4, Ward No.1 Airport Road, Jammu Cantt, retired from Garrison Engineer, Kaluchak (Group-C).
2. MES No.503943, Sh. Om Parkash Sh. Kuti Ram, aged 58 years, resident of House No.246 Narwal pain, PO Satwari, Jammu Cantt, working at Garrison Engineer, Jammu.
3. MES No.362701, Sh. Krishan Lal, aged 66 years, resident of House No.164/6, Ward No.1, Airport Road, Jammu Cantt, retired from Garrison Engineer (Air Force), Jammu.

(All the applicants are working / retd. As valveman under respondents no.6, 7 & 8).

... APPLICANTS

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, Western Command, C/o 56 APO.
4. Chief Engineer, Northern Command, C/o 56 APO.
5. Commander Works Engineer, Jammu.
6. Garrison Engineer, Jammu.

7. Garrison Engineer (Air Force), Jammu.
8. Garrison Engineer, Kaluchak.

... RESPONDENTS

II. OA No.61/196/2017

MES No.368372, Sh. Amir Chand S/o Sh. Chaudhary Ram, aged 56 years, presently working as Pipe Fitter under Garrison Engineer, Kaluchak, (Group-C), (Jammu), J&K.

... APPLICANT

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

... RESPONDENTS

III. OA No.61/197/2017

MES No.503029, Sh. Harbans Singh S/o Sh. Amar Singh, aged 58 years, presently working as Pipe Fitter under Garrison Engineer, Kaluchak, (Group-C), (Jammu), J&K.

... APPLICANT

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. Commander Works Engineer, Jammu.
4. Garrison Engineer, Kaluchak, (Jammu), J&K.
5. Garrison Engineer (South), Akhnoor, (Jammu), J&K.

... RESPONDENTS**IV. OA No.61/221/2017**

MES No.502612, Inderjit Singh S/o Kishan Singh, aged 57 years and presently working as valvemen, Group-C, under Garrison Engineer, Air Force Station, Jammu (J&K).

... APPLICANT**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.
5. Garrison Engineer, Air Force Station, Jammu.

... RESPONDENTS**V. OA No.61/595/2017**

1. MES No.502456, Anil Kumar S/o Sh. Bal Krishan, aged 60 years, resident of H.No.721, Sec. 4, Vivekanand Colony, Gangyal, Jammu, working as Fitter / Pipe (SK), Group-C.
2. MES No.503928, Sh. Ashok Kumar S/o Sh. Gian Chand, age 59 years, R/o H.No.466, Airport Road, Narwal, Jammu, presently working as Fitter / Pipe (Group-C).
3. MES No.504171, Sh. Gurcharan Singh S/o Sh. Raghubir Singh, aged 58 years, R/o Ward No.2, V&PO-Bhour Camp, Teh. & Distt. Jammu, presently working as Valveman (SK).
4. MES No.503941, Sh. Vijay Kumar S/o Sh. Avtar Chand, aged 57 years, R/o V&PO-Gadhi Garh, Teh. & Distt. Jammu, presently working as Valveman (SK).
5. MES No.504947, Sh. Girdhari Lal S/o Sh. Inder Raj, age 58 years, R/o V&PO-Kamal, Teh. Bishnah, Distt. Jammu, presently working as Valveman (SK).

6. MES No.503949, Sh. Suraj Parkash S/o Sh. Behari Lal, aged 57 years, R/o V&PO Bhour Camp, Ward No.2, Teh. & Distt. Jammu, presently working as Valveman (SK).
7. MES No.504174, Sh. Tersem Kumar S/o Sh. Faquar Ram, age 57 years, Vill. Marhal, PO Abrol, Teh. Bishnah, Distt. Jammu, presently working as Valveman (SK).
8. MES No.503724, Sh. Tulsi Dass S/o Sh. Santokha Ram, aged 59 years, R/o Vill. Badhori, & PO Raya, Teh. & Distt. Samba, Jammu, presently working as Valveman (SK).
9. MES No.503945, Sh. Madan Lal S/o Sh. Sewa Ram, aged 61 years, R/o Vill. Khadian, PO Samailpur, Teh. & Distt. Sambha, Jammu, retired as Valveman (SK) on 26.02.2016.
10. MES No.365071, Bodh Raj S/o Sh. Ganga Ram, age 63 years, R/o Village Badhori, PO Raya, Teh. & Distt. Sambha, Jammu, presently retired as Valveman (SK).
11. MES No.503946, Sh. Gurdial Singh S/o Sh. Gian Singh, age 61 years, R/o Vill. Seer, PO Mogowali, Teh. RS Pura, Distt. Jammu, presently retired as Valveman (SK).
All applicants no.1 to 11, C/o Garrison Engineer, Kaluchak.
12. MES No.507120, Sukhdev Singh S/o Khajoor Singh, age 57 years, R/o H.No.220/A, Subhash Nagar, Jammu, presently working as Valveman (SK), C/o Garrison Engineer, Jammu.

... APPLICANTS

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 Quarters, 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, Jammu (J&K).
6. Garrison Engineer, Jammu Cantt., Jammu.

... RESPONDENTS

PRESENT: Sh. Jagdeep Jaswal, counsel for the applicants in all OAs.
Sh. Ram Lal Gupta, counsel for the respondents in all OAs.

ORDER (Oral)

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SANJEEV KAUSHIK, MEMBER (J):-

1. This order shall dispose of the above captioned five O.As. as they involve identical facts, questions of law and relief claimed therein and likewise also requested by learned counsel for the parties.
2. At the very outset, Sh. Ram Lal Gupta, learned counsel for the respondents submitted that these petitions deserve the same fate as decided by this Court in a bunch matters leading case being that of **Bishamber Dass vs. UOI & Ors.** (O.A. No.061/00081/2017).
3. Sh. Jagdeep Jaswal, learned counsel for the applicants submitted that there are observations recorded by this Court that if a judgment is in their favour on the basis of which they are entitled to a relief, which has been upheld by the Hon'ble High Court, then the same cannot be disturbed by the authorities. He submitted that applicants were party to judgment dated 19.08.2010 passed by the J&K High Court where as many as four LPAs, leading case being that of **Union of India vs. Amar Nath and Ors.** LPASW No.27/2006 were disposed of, whereby petitioners therein were held entitled to grant of benefit of equal pay for equal work. This aspect of the matter has been considered by this Court in the case of Bishan Dass (supra) relied upon by the respondents, therefore, this O.A. can be disposed of in the same terms.
4. We have given our thoughtful consideration to the entire matter. We are of the view that once the issue has been considered in depth and decided, then there is no question of taking a different view when arguments are same and issue stands settled. Relevant paragraphs of

order dated 01.06.2018 in the case of Bishan Dass (supra), which has settled the matter regarding re-fixation of pay in favour of the respondents and recovery in favour of the applicants therein, read as under:-

- "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 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.
 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."
5. For parity of reasons given in the extracted portion, these OAs are disposed of in the same terms. All the pendings MAs also stand disposed of accordingly.
 6. Parties are left to bear their own costs.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 05.10.2018.
Place: Chandigarh.

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