

OA.No.170/00091/2016/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00091/2016

DATED THIS THE 17th DAY OF SEPTEMBER, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V.SANKAR, MEMBER (A)

Sri.P.Puttaraju
 S/o. P.Papanna
 Aged about 56 years
 W/as Retired Lift Operator
 Garrison Engineer (I)
 R&D East, Bangalore.
 R/o.No.37, 17th Cross, 2nd Main Road
 Lakkasandra, Bangalore-560042.

...Applicant

(By Advocates Shri M.Srinivas & P.K.Malaki)

Vs.

1. The Union of India
 Represented by its Secretary
 Ministry of Defence
 South Block
 New Delhi-110 011.
2. The Chief of the Army Staff
 Army Headquarters
 New Delhi-110 011.
3. The Director General Personnel, E1C
 E-IN-C Branch/EIC (LEGAL-D)
 IHQ of MOD (Army), Kashmir House
 Army Headquarters
 New Delhi-110 011.
4. The Commander Works Engineers (Army)
 101, Dickenson Road, Bangalore-560 042.
5. The Chief Engineer, HQ
 Southern Command, Pune.
6. The Garrison Engineer
 I(R&D), (East), DRDO Complex
 C.V.Raman Nagar
 Bangalore-560093.

...Respondents

(By Advocate Shri K.Gajendra Vasu)

O R D E R (ORAL)

(PER HON'BLE DR.K.B.SURESH, MEMBER (JUDL.))

Heard. The matter relates to parity between the lift operators in the MES and lift operators in the CPWD. The objection raised is that in the CPWD, there are recruitment rules which govern the issue and in MES there are no recruitment rules and therefore their pari materia contention cannot be taken. But apparently this matter was taken up by the Tribunal in the Principal Bench and passed order in favour of the employees of MES. That was challenged on the ground that the CPWD employees in the similar nature had obtained an award from the Labour Tribunal which went up to the Hon'ble Apex Court and having been confirmed by the Hon'ble Apex Court was made available to them. Apparently this position was also to be confessed by the Hon'ble Delhi High Court in WP(C)No.692/2012 dtd.8.7.2013 which we quote in full as it covers the entire factum of the issue arose in this case also.

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: July 03, 2013

Judgment Pronounced on: July 08, 2013

W.P.(C) No.692/2012

UOI & ORS.Petitioners
Represented by: Mr.Sumeet Pushkarna, Advocate

versus

JATADHAR SINGH & ORS. Respondents
Represented by: Mr.Ankur Chhibber, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. Vide order dated November 01, 2010, OA No.1129/2010 filed by the respondents was allowed holding that work performed by the respondents was in the skilled category and not semi-skilled category and thus they would be entitled to wages applicable to skilled workman and consequently benefit of first financial upgradation under the ACP Scheme

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to which they would be entitled to would be in the pay scale `4000-6000 and the second financial upgradation benefit would be in the pay scale `5000-8000. The Tribunal held that the second financial upgradation would be upon rendering 20 years service. The said order was corrected vide order dated December 23, 2010 observing that the second financial upgradation would be after rendering 24 years service and not 20 years service. Review sought by the petitioners of the order dated November 01, 2010 as corrected on December 23, 2010 has been declined vide order dated March 17, 2011.

2. Respondents were appointed as Lift Attendants and were treated as semi-skilled workmen and paid salary in the then applicable pay scale `210-290. At that time skilled workmen were placed in the pay scale `260-400. The post was re-designated as a Lift Operator on June 24, 1987. Lift operators working in CPWD had raised an issue of being treated as semi-skilled workmen; claiming to be skilled workmen, which dispute was referred to arbitration and the award came in favour of the Lift Attendants re-designated as Lift Operators. The issue as to whether first financial upgradation benefit when the ACP scheme was introduced in the year 1998 would required Lift Operators to be upgraded in the pay scale `4000-6000 or not was decided by a Division Bench of this Court in CCA No.7/2001 and W.P.(C) No.2792/1988 on September 25, 2008 and suffice would it be to note that the decision was in favour of the workmen. The award was upheld. Prior thereto, on August 16, 1996 deciding OA No.1067/1994 the Central Administrative Tribunal held that Lift Operators working in the Military Engineering Service have to be treated as skilled workmen and paid salary in the pay scale `260-400 and not `210-290.
3. As regards the instant case it is not in dispute that the respondents were appointed as Lift Attendants which post was redesignated as a Lift Operator. They were all called to appear at the trade test to fill up the post of 'Fitter General Mechanic' which post was previously called „Lift Mechanic skilled'. But the recruitment process was not taken to its logical conclusion.
4. The principal issue which arose for consideration before the Tribunal was whether the post of Fitter General Mechanic was a promotional post to the post of a Lift Operator because of the reason the ACP scheme in question contemplates in situ upgradation in the next above pay scale if an incumbent does not earn promotion in 12 years and further in situ upgradation in the next above pay scale if no promotion is earned in the next 12 years; if the posts are hierarchical the next above pay scale would be of the promotional post and if there is not hierarchical cadre the next above pay scale would be as per the pay scales adopted by the Government.
5. Pertaining to the impugned decision which is in favour of the workmen the Tribunal has returned a finding that appointed as Lift Attendants which post was re-designated as Lift Operators the respondents have to be treated as skilled workmen and the post of Fitter General Mechanic is the promotional post to the said post and since pay scale of the post of Fitter General Mechanic is `4000-6000 the first ACP benefit would require respondents to be placed in the said pay scale and upon rendering 24 years service they would be entitled to be placed in the next above non-hierarchical cadre pay scale `5000-8000 because above the pay scale `4000-6000 is the pay scale `5000-8000. It needs to be highlighted that since the respondents cleared the trade test for the post of Fitter General Mechanic the department gave them benefit of first financial upgradation in the pay scale `4000-6000 but later on took the stand that the same was

erroneous and past orders to withdraw the benefit and placed respondents in the pay scale `3200-4900 when first ACP benefit had to be granted and in the pay scale `4000-6000 when second ACP benefit had to be granted.

6. The impugned order has been challenged by the petitioners on the following three grounds:-

- i) That the post of Lift Operator was a semi-skilled post and the grant of `4000-6000 as first financial upgradation to the respondents was erroneously given after conducting the trade test.
- ii) That the post of Lift Operators is an isolated post and there being no promotional avenues, the Respondents were wrongly given the scale of `4000-6000, whereas they were entitled to the scale of `3200-4900 as first financial upgradation and second being `4000-6000. In light of DOPT OM dated August 09, 1999 which specifies as follows:

“....in case of isolated posts, in the absence of defined hierarchical grades, financial upgradation shall be given by the Ministries/Departments „concerned“ in the immediately next higher (standard/common) pay scales as indicated in annexure-II which in keeping with Part-A of the first schedule annexed to the notification dated September 30 1997 of Ministry of Finance(Department of Expenditure). For instance, incumbents of isolated posts in pay scale S-4, as indicated in Annexure-II, will be eligible for the proposed two financial upgradations only to the pay scale S-5 and S-6. Financial upgradation on a dynamic basis (i.e. without having to create posts in the relevant scales of financial upgradation under the Scheme shall be personal to the incumbent of isolated post, the same shall be filled at its original level (pay scale) when vacated.”

- iii) Thirdly deciding OA No.2149/2008 on March 31, 2011 similar prayer made by similarly situated persons had been rejected by the Tribunal.

7. The first ground urged by the petitioner that the post of Lift Operator is a semi-skilled post is contrary to the award passed in favour of the Lift Operators working in CPWD which has been upheld by a Division Bench of this Court as per its decision dated September 25, 2008 deciding CCA No.7/2001 and W.P.(C) No.2792/1988 and suffice would it be to state it is the nomenclature of a post and its duties which matters and it is hardly any argument that said decision pertained to Lift Operators working under CPWD. Secondly, the decision of the Tribunal pertaining to Lift Operators working in MES is also against the petitioners. The Union of India, for administrative convenience, has various Ministries and Offices. As long as the nature of duties is the same and nomenclature of the post is also the same, decisions by judicial forums pertaining to employees of a particular Ministry would bind the Union when similar claims are made by others. The respondents were initially appointed as Lift Attendants and paid salary in the pay scale `210-290. The said post of Lift Attendants was re-designated as Lift Operators on June 24, 1987. The very placement in the said pay scale and not the pay scale `260-400. The decisions in CCA No.7/2001 by the Division Bench of this Court and the decision of the Tribunal dated August 16, 1996 has concluded the said issue.

8. As regards the second ground urged, it is to be noted that the respondents were initially appointed as Lift Attendants and placed in the

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pay scale `210-290. On June 24, 1987 the post of Lift Attendant was redesignated as Lift Operators. As per the recruitment rules the next promotion is to the post of Lift Mechanic (Skilled). This is evident from a copy of the Recruitment Rules to the post of Lift Mechanic (Skilled). The said post of Lift Mechanic (Skilled) was re-designated as Fitter General Mechanic by an order dated July 06, 1994. Thus the next promotional post to the lift operators was Fitter General Mechanic. Undisputedly in terms of the said Recruitment Rules the petitioners held a trade test for the respondents to the post of Fitter General Mechanic on January 01, 2001. The said trade test was successfully cleared by the respondents and thus the respondents were granted the first financial upgradation in the pay scale `4000-6000 vide order dated April 24, 2006 with effect from 1999. The stand of the petitioners that this was a mistake is belied from the fact as late as December 07, 2011 in response to an RTI query the petitioners have confirmed to the respondents that the post of a Lift Operator is not an isolation post and that the post of Fitter General Mechanic is a promotional post to that of a Lift Operator.

9. As regards the third contention urged that deciding OA No.2149/2008 the Tribunal has declined similar claim made by the applicants therein, it would be sufficient for us to note that the Tribunal was not informed of the fact that Lift Operators working in CPWD had an award in their favour requiring Lift Operators to be treated as skilled workmen which was upheld by a Division Bench of this Court and the Tribunal had extended benefit of the award to Lift Operators working in MES.
10. The position therefore boils down to this. Lift Attendants, re-designated as Lift Operators have to be treated as skilled workmen and had to be placed in the pay scale `260-400 and not `210-290 and correspondingly as and when pay revisions were effected were entitled to be placed in the replacement scale `950-1500 which replaced the pay scale `260-400 and the pay scale `3050-4500 which replaced the pay scale `950-1500. The post of Fitter General Mechanic being the promotional post in the pay scale `4000-6000 the first ACP benefit had to be in the said pay scale and on completion 24 years service the next above pay scale (non-hierarchical) `5000-8000 had to be granted to them.
11. The decision of the Tribunal being correct we dismiss the writ petition but without any orders as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

JULY 08, 2013

2. Aggrieved by this, the same respondents had taken it up with Hon'ble Apex Court in SLP(CC).1720/2014 and vide order dtd.05.05.2014, the Hon'ble Apex Court condoned the delay but dismissed the SLP and therefore the matter has now become concretized. We hereby quote from the order passed by the

Hon'ble Apex Court as follows:

Upon hearing Counsel the Court made the following
ORDER

Delay condoned.

Heard learned counsel for the petitioners.

The special leave petition is dismissed.

3. Therefore, the matter has now attained finality which cannot be interfered with by any Bench. We also advised in many other states when the same situation has arisen and various Tribunals, High Courts and Hon'ble Apex Court have reiterated the situation and thereafter it has been implemented there also. Therefore, Article 14 will be defeated if the same is not extended. Therefore, there will be a declaration that the applicant is also entitled the similar pay parity with those working in the CPWD and there is no reasonable logic postulated to deny them this. The OA is therefore allowed. Benefits to be extended to him within two(2) months next.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00091/2016

Annexure-A1: Copy of appointment order

Annexure-A2: Pension Payment Order

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Annexure-A3: Order dt.1.11.2010

Annexure-A4: Copy of order dt.23.5.2015

Annexure-A5: Copy of representation dt.28.11.2016

Annexures with reply statement:

Annexure-R1: Copy of recruitment rules for lift operators of MES and CPWD

Annexure-R2: Copy of speaking order dtd.22.10.2014

Annexure-R3: Copy of pay fixation

Annexure-R4: Copy of option certificate

Annexure-R5: Copy of notification dtd.10.1.1991

Annexure-R6: Copy of representation

Annexures with rejoinder:

Annexure-A6: Copy of order of High Court of Delhi dtd.08.07.2013

Annexure-A7: Copy of order of Hon'ble Supreme Court dt.05.05.2014

Annexure-A8: Copy of the reported judgment 1985(2) SCC 648 Sri Inderpal
Yadav Vs. Union of India

Annexure-A9: Copy of the reported judgment (2206) 2 SCC 747 State of
Karnataka v. C.Lalitha

Annexures with additional reply statement:

-NIL-

Annexures with written arguments note filed by the respondents:

-NIL-
