

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

OA No.060/01017/2017

Reserved on : 11.01.2019

Pronounced on : 22.01.2019

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

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1. Jaswinder Singh, age 59 years, s/o Late Sh. Amrit Singh, working as Technician Grade-I, O/o Executive Engineer CP Division No.2 (Road), Sector 9, Chandigarh, r/o House No.2633, Sector 19/C, Chandigarh, Group-C.
2. Malkiat Singh, age 59 years, S/o Sh. Swaran Singh, working as Technician Grade-I, O/o Executive Engineer CP Division No.3, Sector 16, Chandigarh, r/o House No.827, Sector 43, Chandigarh, Group-C.
3. Ramesh Sandhu, age 59 years, s/o Sh. Swaran Chand, working as Technician Grade-I, O/o Executive Engineer CP Division No.3, Sector 16, Chandigarh, r/o House No.2283, Sector 23/C, Chandigarh, Group-C.
4. Gauri Shankar, age 59 years, s/o Sh. Gurdas Ram, working as Technician Grade-I, O/o Executive Engineer CP Division No.3, Sector 16, Chandigarh, r/o House No.4625, Sector 46/D, Chandigarh, Group-C.
5. Gurdial Singh, age 57 years, s/o Sh. Milkhi Ram, working as Technician Grade-I, O/o Executive Engineer CP Division No.5, Sector 9, Chandigarh, r/o House No.841, Phase-10, Mohali, Group-C.
6. Sat Pal, age 55 years, s/o Sh. Sunder Singh, working as Technician Grade-I, O/o Executive Engineer CP Division No.4, Sector 9, Chandigarh, r/o House No.35, Gali No.1, Adarsh Nagar, Derabassi, Mohali, Group-C.
7. Ram Paul, age 59 years, s/o Sh. Amar Singh, working as Technician Grade-I, O/o Executive Engineer CP Division No.1, Sector 9, Chandigarh, r/o House No.4483, Sector 46, Chandigarh, Group-C.

8. Inderpal Singh, age 57 years, s/o Sh. Bakhshish Singh, working as Technician Grade-II, O/o Executive Engineer CP Division No.3, Sector 16, Chandigarh, r/o House No.2842, Phase-7, Mohali, Group-C.
9. Khan Bahadur, age 59 years, s/o Sh. Munshi Khan, working as Technician Grade-II, O/o Executive Engineer CP Division No.5, Sector 9, Chandigarh, r/o Village Badali, Tehsil Kharar, District Mohali, Group-C.
10. Satish Chander, age 55 years, s/o Sh. Bhagwati Parshad, working as Technician Grade-II, O/o Executive Engineer CP Division No.6, Sector 9, Chandigarh, r/o House No.1540, Sector 23/B, Chandigarh, Group-C.
11. Surinder Pal Singh, age 57 years, s/o Sh. Inderjeet Singh, working as Technician Grade-I, O/o Executive Engineer CP Division No.3, Sector 16, Chandigarh, r/o House No.1607, Sector 40/B, Chandigarh, Group-C.
12. Anil Kumar Bansal, age 57 years, s/o Sh. Sulekh Chand, working as Technician Grade-I, O/o Executive Engineer CP Division No.3, Sector 16, Chandigarh, r/o House No.2748, Sector 37/C, Chandigarh, Group-C.
13. Didar Singh, age 51 years, s/o Sh. Walaiti Ram, working as Technician Grade-II, O/o Executive Engineer CP Division No.3, Sector 16, Chandigarh, r/o House No.2318, Sector 24, Chandigarh, Group-C.
14. Harbhajan Singh, age 57 years, s/o Sh. Garib Dass, working as Junior Engineer (Civil), O/o Executive Engineer CP Division No.2 (Road), Sector 9, Chandigarh, r/o House No.2363, Sector 24, Chandigarh, Group-C.
15. Kali Bahadur, age 59½ years, s/o late Sh. Padam Bahadur, working as Technician Grade-I, O/o Executive Engineer CP Division No.9, Sector 9, Chandigarh, r/o House No.2364/A, Sector 20/C, Chandigarh, Group-C.
16. Ranbir Singh, age 58 years, s/o Sh. Darshan Singh, working as Technician Grade-I, O/o Executive Engineer CP Division No.3, Sector 16, Chandigarh, r/o House No.836, Sector 7/A, Chandigarh, Group-C.

17. Kewal Krishan, age 59 years, s/o Sh. Khushi Ram, working as Technician Grade-I, O/o Executive Engineer CP Division No.6, Sector 9, Chandigarh, r/o House No.2065/2, Sector 37/C, Chandigarh, Group-C.
18. Gur Parkash Singh, age 57 years, s/o Late Sh. Amrao Singh, working as Technician Grade-I, O/o Executive Engineer CP Division No.6, Sector 9, Chandigarh, r/o House No.2246, Sector 68, Mohali, Group-C.
19. Tek Chand, age 58 years, S/o Late Sh. Amar Nath, working as Technician Grade-I, O/o Executive Engineer CP Division No.3, Sector 16, Chandigarh, r/o House No.2430, Sector 20/C, Chandigarh, Group-C.
20. Charan Singh, age 57 years, S/o Sh. Tara Singh, working as Technician Grade-I, O/o Executive Engineer CP Division No.3, Sector 16, Chandigarh, r/o House No.3357/A, Sector 38, Chandigarh, Group-C.
21. Gurcharan Singh, age 57 years, s/o Sh. Ram Sarup, working as Technician Grade-I, O/o Executive Engineer CP Division No.4, Sector 9, Chandigarh, r/o House No.470, Village Maloaya, Chandigarh, Group-C.
22. Gurmukh Singh, age 59 years, s/o Sh. Charan Singh, working as Technician Grade-I, O/o Executive Engineer CP Division No.1, Sector 9, Chandigarh, r/o House No.1357, Sector 19/B, Chandigarh, Group-C.
23. Mam Raj, age 60 years, s/o Sh. Bachna Ram, Retired as Technician Grade-I, O/o Executive Engineer CP Division No.3, Sector 16, Chandigarh, r/o House No.479, Village Burail, Sector 45, Chandigarh, Group-C.
24. Surmukh Singh, age 60 years, s/o Sh. Bhagat Singh, Retired as Technician Grade-I, O/o Executive Engineer CP Division No.6, Sector 9, Chandigarh, r/o House No.18, Village Badheri, Sector 41, Chandigarh, Group-C.
25. Naresh Kapoor, age 60 years, s/o Bishan Nath, Retired as Junior Engineer (Civil), O/o Executive Engineer CP Division No.4, Sector 9, Chandigarh, r/o Flat No.1312, Progressive Society, Sector 50/B, Chandigarh, Group-C.

26. Bhagwan Dass, age 62 years, s/o late Sh. Gulzari Lal, Retired as Technician Grade-I, O/o Executive Engineer CP Division No.3, Sector 16, Chandigarh, r/o Village Kurli, P.O. Munali, Tehsil and District Mohali, Group-C.
27. Baljit Singh, age 64 years, s/o Late Sh. Achhar Singh, Retired as Technician Grade-I, O/o Executive Engineer CP Division No.3, Sector 16, Chandigarh, r/o House No.80, Village Dadumajra, Chandigarh, Group-C.
28. Suman Kumar, age 59 years, S/o Sh. K.R. Chugh, Retired as Technician Grade-I, O/o Executive Engineer CP Division No.6, Sector 9, Chandigarh, r/o House No.22169, Sector 40/C, Chandigarh, Group-C.
29. Smt. Surinder Sood, age 64 years, w/o Late Sh. Varinder Sood, S/o Sh. Puran Chand Sood, Retired as Technician Grade-I, O/o Executive Engineer CP Division No.4, Sector 9, Chandigarh, r/o House No.410, Sector 40/A, Chandigarh, Group-C.

....APPLICANTS

(Present: Mr. Barjesh Mittal, Advocate)

VERSUS

1. Union Territory, Chandigarh Administration, through its Finance Secretary-cum-Secretary Engineering, U.T. Civil Secretariat, Deluxe Building, Sector 9/D, Chandigarh.
2. Chief Engineer, Union Territory, Chandigarh Administration, U.T. Civil Secretariat, Deluxe Building, Sector 9/D, Chandigarh.
3. Superintending Engineer, Construction Circle-1, U.T. Civil Secretariat, Deluxe Building, Sector 9/D, Chandigarh.
4. Roop Lal, Mortar Mate, s/o Sh. Soorat Ram, c/o Sub Divisional Engineer, under CP, Division No.3, Secretariat Sub Division, Punjab Civil Secretariat, Sector 1, Chandigarh.
5. Manstinder Singh, Work Munshi, c/o Sub Divisional Engineer, Const. Sub Division No.2 (under CP Division No.1), Addl. Offices Building, Sector 9D, Chandigarh.

....RESPONDENTS

(Present: Mr. Aseem Rai, Advocate.)

ORDER

HON'BLE MRS. P. GOPINATH, MEMBER (A) :-

1. The applicants of the persons appointed as Mortar Mate / Work Munshi / Work Inspector as per dates indicated in Annexure A-2 appointment letter. The seniority list of the above cadre was issued on 02.07.2004 for Mortar Mate and Work Mistris / Work Munshis and on 31.03.2010 for Work Inspectors, where the name of the applicants finds mentions as per their date of joining.

2. The respondent Chandigarh Administration prepares the draft recruitment rules in the year 1988, wherein the qualification for the feeder cadre post of Mortar Mate is amended and prescribed as Matric / Non Matric with ITI Certificate for promotion to the post of Work Munshi / Work Mistri / Work Inspector. The promotion was to be made 100% by way of promotion. It was also stipulated that person with ITI Certificate would be preferred. Respondent no.1 Finance Secretary issued Annexure A-7 communication dated 21.06.1999, directing the Engineering Department to revise the pay scales of ITI qualified workers as per the Punjab Government notification. The respondent no.2, communicates this to all the Superintending Engineers of U.T. Chandigarh for implementing the revised pay scales.

3. On 02.07.2004, Chandigarh Administration notifies the recruitment rules, superseding the earlier draft recruitment rules and modifying the earlier qualification by prescribing the qualification of Matric with ITI Certificate and 2 years experience in the trade. Hence, the draft recruitment rules cited above is replaced by 02.07.2004 notified recruitment rules.

4. The applicants are aggrieved by the grant of higher pay scale to the technically qualified juniors working on the same posts

and performing the same duties. The grievances of the applicants are that, they are affected by the notified recruitment rules as they did not possess them. However, they possessed the requisite qualification to hold the higher post at the time of their initial recruitment. They also argue that their right for entitlement to the revised pay scales on the ground that they are Non Matric / Non ITI, is not sufficient to deny them the higher pay scales granted to those, who were technically qualified with the ITI qualification. The applicants submitted a joint representation for grant of stepping up of their pay at par with their juniors.

5. The applicants also filed OA No.060/01055/2014 before this Tribunal praying for stepping up of their pay at par with their technically qualified juniors. The Tribunal vide order dated 20.11.2014 (Annexure A-15) disposed of the OA with direction to the respondents to decide the representation dated 01.07.2013 (Annexure A-14) by passing speaking and reasoned order in accordance with rules and law. Annexure A-1 impugned order dated 29.01.2016 was issued after the applicants filed CP No.060/00189/2015, which rejected the claim of the applicants for stepping up of their pay at par with their technically qualified juniors. The respondents grounds for rejection was on account of an earlier decision of the Tribunal in OA No.509/CH/2002 titled **UT Diploma Engineer Association and another vs. UT Chandigarh and others** decided on 15.01.2003 (Annexure A-17). This OA was filed by technical staff, the diploma holders or ITI trained technicians who demanded the same pay scales. The dispute in this OA was that there is no basis for ITI diploma holders to draw the higher pay as of those with three years Engineering Diploma.

6. Whereas the higher pay scales to persons junior to the applicants was granted by the respondents on the ground that they possessed ITI / Diploma qualification, the applicants sans ITI / Diploma qualification are praying for stepping up of their pay at par with their juniors. The applicants cite Hon'ble Punjab and Haryana High Court orders in **Narinder Kumar vs. State of Haryana and others** 2013 (2) SCT 336, and **Gurdev Singh and others vs. State of Haryana and others** 2012 (2) SCT 125, which had held that Technical persons cannot be denied higher pay scales on the ground that they are Non ITI / Diploma holders and that the requisite experience in the trade be considered as equivalent to ITI / diploma. Prayer of the applicants is for stepping up of their pay at par with their technically qualified juniors from the date the higher pay scale was granted to them on account of possessing the ITI / Diploma qualification.

7. The respondents submit that the UT Administration had adopted the notification of Punjab Government granting the pay scale w.e.f. 01.02.1968, 01.01.1976, 01.01.1986 and 01.01.1996, as given by the State of Punjab to its ITI qualified employees. The scale of pay and associated qualification was also adopted, as given to the Punjab Government employees. The requisite qualification for the post of Work Munshi was matric, with the proviso that the persons holding certificate in Draftsman / Surveyor from ITI would be preferred. These recruitment rule remained in force till they were superseded by notified recruitment rules of 02.07.2004. The applicants were denied the technical scales as they did not possess the ITI qualification at the time of their appointment. Hence, the issue of juniors or seniors was

not what guided the pay scales, but the possession of the relevant ITI qualification entitled employees to higher scales.

8. Heard the learned counsels for the parties and perused the written submissions made.

9. It is observed that when the applicants were made an offer of initial appointment, the pay scale admissible to their post had been specifically mentioned in the offer of appointment and only on accepting the same, they were required to join the post. The applicants accepted the terms and conditions when they joined on various dates from 1978 onwards, and have been agitating the matter for several years. The recruitment rule of 1988 supported the applicants. This was superseded by the notified recruitment rules of 02.07.2004. In the recruitment rules of 2004, the cadre held by the applicants have been held at par for the purpose of grant of technician scales, irrespective of the fact whether they possess the ITI qualification or not. Though the applicants hold the same post as those with technical qualification, they are not drawing the same pay scale. Applicants cite respondent no.4 and respondent no.5 as having been granted higher pay scale on account of the fact that they have a diploma qualification. Thus, the respondents has made a distinction between those with technical qualification who draw higher pay scale and those without technical qualification who are not given the same pay scale. This is the position in the State of Punjab also, who have not given higher pay scale to senior employees in the cadre on account of the fact that they do not possess any technical qualification. The respondent cites the Hon'ble Apex Court judgment in case of **U.P. State Sugar Corp. Vs. Sant Raj Singh** 2006 (3) SCT 56, which has held that "Classification based on qualification depends upon the

quality in all respect – Doctrine of equal pay for equal work provided in Articles 14 and 19 (1) of the Constitution cannot be applied in vacuum. Qualification may be a valid basis for classification of two categories of employees. Nature of work may be more or less the same but scale of pay may vary based on academic qualification or experience, skill, quality or responsibility of duties. If the authority takes a decision as a matter of policy to place a category of employees in a particular pay scale, the court cannot interfere unless the classification is arbitrary, unfair or irrational”.

10. Thus, the equal pay for equal work principle comes with the rider that persons with higher qualification as prescribed in the recruitment rules need to be treated as a class apart with a different classification. This has been adopted by the Punjab govt. also. Such a classification is not unfair or arbitrary as the persons with higher qualification need to be rewarded accordingly. However, the Bench notes that the applicants can be given a relief under FR 22 (22) wherein the provision has been made for removal of anomaly by stepping up of pay of the senior drawing less pay than the junior, provided that both senior and junior belong to the same cadre. Though this provision is applicable on promotion, we draw an analogy from the above FR that the junior is drawing more pay than the senior and direct that a stepping up of pay be given on account of the anomaly of the junior drawing more pay. Whereas a diploma / ITI qualified person may better fit the job, in Annexure A-1 speaking order, the respondents quoting from the representation of the applicants states that the applicants are working in a technical post for the last 20 to 30 years, which means they have experience to their credit which has been overlooked while ignoring their prayer. Further the prayer if

granted would be for a class of few persons with a matric qualification. Further as per 2004 recruitment rules only persons with Matric and ITI / Diploma qualification are being recruited. In the representation, the applicants also cite the Punjab and Haryana High Court case titled **Narinder Kumar vs. State of Haryana and others** 2013 (2) SCT 336 in their favour, which held that the persons appointed to the post prior to amendment of qualification cannot be denied the benefit of pay revision of a post on the basis of subsequent amendment to the rules. Further the respondent appears to have totally overlooked any benefit to be granted, for the work experience of those including the applicants, prior to the amendment of rules prescribing the ITI or Diploma qualification.

11. In view of above, the OA is allowed. The arrears if any on such a fixation be restricted to three years, as per the Hon'ble Apex Court directions in Civil Appeal No.5151-5152 of 2008 titled as **Union of India and another versus Tarsem Singh,** decided on 13.08.2008.

(SANJEEV KAUSHIK)
MEMBER (J)

(P. GOPINATH)
MEMBER (A)

Place : Chandigarh
Dated: 22.01.2019

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