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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.505/2003

New Delhi. this the 3rd day of December, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S. K. Naik, Member (A)

- 1.. Shri Lalit Kumar Gaur MES No.462349
Aged about 40 years
s/o Shri Kalash Chand Sharma
Working as Cable Jointer HS (II)
In the office of GE (U) E/M Meerut
r/o F-14, Pandav Nagar, Meerut
 - 2.. Shri Rajendra Kumar MES No.462350
Aged about 42 years s/o Shri Bhikari Lal
Working as Cable Jointer HS (II)
in the office of GE (U) E/M Meerut
R/o 292, Ram nagar,
Gali No.4, Kanker Khara, Meerut
- ..Applicants

(By Advocate: Shri V.P.S.Tyagi)

Versus

- 1.. Union of India through Secretary
Ministry of Defence, South Block
New Delhi
 - 2.. The Engineer-in-Chief (E-in-C's Branch)
Army Head Quarters, DHQ PO New Delhi
 - 3.. The Chief Engineer Bareilly Zone, Bareilly
 - 4.. The Commander Work's Engineers
Meerut Cantt.
 - 5.. The Garrison Engineer (U) E/M
Meerut Cantt.
- ..Respondents

(By Advocate: Shri R.N.Singh)

O R D E R

Shri S.K.Naik:

The applicants are presently serving as Defence Civilians in the trade of Cable Jointer HS (II) with the Garrison Engineer, Meerut Cantt. Applicant No.1 was initially appointed as Cable Jointer (SK) on 9.11.1987 and applicant No.2 was so appointed on 29.7.1987 in the pay scale of Rs.800-1150/-.

- 2.. They were subsequently promoted as Cable Jointer (SK) in the scale of Rs.950-1500/- on completion of the

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probationary period of two years. Simultaneously, they were also promoted to the post of ~~Cable Jointer~~ HS-II in the scale of Rs.1200-1800/- with effect from the same date.

3. The applicants contend that the post of Cable Jointer is a highly skilled grade II (HS-II) post and the applicants being highly qualified with ITI certificates were entitled to the pay scale of Rs.1200-2040/- from the very beginning. Further, they have also raised the issue of entitlement to ACP. In their relief column, their averments read as under:-

"(a) That this Hon'ble Tribunal may graciously be pleased to quash and set-aside the impugned orders (A-1 and A-2) passed by the Respondents and direct the Respondents to re-fix the applicants' pay in the correct scale i.e. Rs.1200-2040 with all consequential benefits and payment of arrears by granting the same from the date of initial appointment and not from a date two years subsequent thereof.

(b) That the Respondents may kindly be directed to grant the 1st ACP to the applicants as per DOPT scheme with effect from the date after completion of 12 years qualifying service in their grade since 1987 in their trade as HS (II) by granting next scale of Rs.5000-8000 with payment of arrears."

4. Counsel for the applicants has contended that the applicants were erroneously given the pay scale applicable to semi skilled category whereas in fact they were entitled to be appointed to HS-II category from the very beginning. He has contended that as per E-in-C's Branch Army HQ letter dated 28.9.1987, the post of HS-II was to be filled by promotion of Wireman/Lineman with three years of service after passing the trade test. It

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also states that ITI certificate holder in the trade of Electrician with three years experience could also be appointed as Cable Jointer as direct recruits. In that situation, the counsel contends that the applicants being ITI certificate holder should have been granted the pay scale of HS-II on their initial appointment itself. Had that been so, the applicants would have also been entitled to the benefit under the ACP scheme as they have not been promoted ever since their initial appointment.

5. That the applicants could not have been appointed in the pay scale meant for the semi skilled while they were appointed for the skilled category, counsel for the applicants has relied upon two judgments passed by the Jabalpur Bench of this Tribunal in OA-166/91 decided on 21.5.1999 and OA-102/95 decided on 13.9.1999. In the latter case, which is very similar to one under dispute, applicants' case was with regard to the initial appointment on various skilled posts and where the applicants were appointed in the pay scale of Rs.800-1150/- but they were holding the post meant for the skilled categories. The pay scale relevant for the skilled posts then was also Rs.950-1500/-. The Tribunal allowed the prayer therein with direction to the respondents that the applicants should be fixed in the pay scale of Rs.950-1500/- from the date of their initial appointment. Counsel for applicants has contended that the case of the present applicants is exactly similar.

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6.. Counsel for the respondents has rebutted the claim of the applicants and has stoutly defended the case of the respondents. In his pleadings, he has stated that the applicants were appointed against the post of Cable Jointer (SK) in the pay scale of Rs.800-1150/-. Even though the pay scale for Cable Jointer (SK) was Rs.950-1500/-. the lower scale of semi skilled was given to the applicants since they were being directly recruited with incomplete qualification inasmuch as they did not have three years of experience even though they were ITI certificate holder. At the time of their recruitment itself, the Chief Engineer Bareilly Zone had consciously released two vacancies of Cable Jointer (SK) for direct recruitment and according to the process of recruitment then prevalent, the candidates were to be first appointed in the grade of semi skilled category to be upgraded to the proper scale meant for the SK category after completion of their probationary period. The applicants were in full knowledge thereof and, therefore, they cannot raise this issue at this point of time. Counsel has further contended that sooner the applicants completed the period of two years' probation, they were not only granted the appropriate scale of Rs.950-1500/- meant for the Cable Jointer (SK) but also promoted as Cable Jointer (HS-II) in the still higher grade of Rs.1200-1800/-. According to the counsel for the respondents, therefore, the applicants have absolutely no case for seeking the grade of HS-II from the very beginning. Further having been promoted from the post of Cable Jointer (SK) to that of Cable Jointer (HS-II), they

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are not entitled to the first ACP and the Department would consider their case for the second ACP as soon as they complete twenty four years of service.

7. We have considered the pleas advanced by both the parties. It is not disputed that even though the applicants were appointed against the post of Cable Jointer (SK), they were given the pay scale meant for the semi skilled which was Rs.800-1150/-. It is also not disputed that the pay scale of Cable Jointer (SK) was Rs.950-1500/-. Counsel for the applicants has argued that in the absence of any such pay scale as Rs.800-1150/- for Cable Jointer (SK), the applicants could not but have been placed in the proper scale of Cable Jointer (SK) which was Rs.950-1500/-. The contention of the respondents that having accepted the pay scale, the applicants are stopped from raising this issue at this point of time also will have no justification as the applicants who are job seeker could not but accept the appointment and the scales offered to them. We agree with the argument advanced by the counsel for applicants in this regard. We also agree with the view as already expressed in OA-102/95 that the applicants, who were appointed against the post of Cable Jointer (SK), were entitled to the proper scale meant for them, i.e., Rs.950-1500/- from the very beginning. We, therefore, direct that the respondents should treat the applicants as having been appointed as Cable Jointer (SK) in the pay scale of RS.950-1500/- from the very beginning.

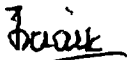
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8. Insofar as the other relief sought for by the applicants with regard to ACP is concerned, we find that the post of Cable Jointer (HS-II) is in the pay scale of Rs.1200-1800/- and the respondents have promoted the applicants to that grade. Once the applicants have received the promotion, they will not be entitled to the benefit of the first ACP and the stand of the respondents in this regard that they will consider the applicants' case for the second ACP as and when they complete twenty four years of service, in our view, is absolutely correct.

9. In the circumstances, the OA partly succeeds and allowed accordingly. The respondents are directed to grant the applicants the pay scale of Rs.950-1500/- from the date of their initial appointment until they were promoted to the pay ^{scale 7} of HS-II. No order as to costs.


(S. K. Naik)
Member (A)


(V.S. Aggarwal)
Chairman

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