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**Central Administrative Tribunal
Principal Bench**

OA No. 1691/2003

New Delhi this the 7th day of June, 2006.

Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Mrs. Chitra Chopra, Member (A)

1. Duli Chand S/o Late Kali Ram,
R/o Type-II/43, Minto Road,
Delhi & Others -Applicants

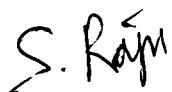
(By Advocate Shri Yogesh Sharma)

-Versus-

1. Union of India through
Secretary, Ministry of Health &
Family Welfare, Govt. of India,
Nirman Bhawan, New Delhi & Others -Respondents

(By Advocate Shri R.V. Sinha)

1. To be referred to the Reporters or not? ~~not~~ yes
2. To be circulated to outlying Benches or not? ~~not~~ yes


(Shanker Raju)
Member (J)

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Hon'ble Mrs. Chitra Chopra, Member (A)

1. Duli Chand S/o Late Kali Ram,
R/o Type-II/43, Minto Road,
Delhi.
2. Jai Prakash S/o Late Attar Singh,
R/o G-I, East Vinod Nagar,
Delhi-110091.
3. Braham Prakash S/o Dal Chand,
3244, Arya Pura, Subzi Mandi,
Delhi.
4. Smt. Mayawati w/o Prem Chand,
R/o Vill. Shahbad Muhamadpur,
Palam, New Delhi-110045.

(All are working as Tailors in the Lady
Hardinge Medical College & Smt. Sucheta
Kriplani Hospital, New Delhi.

-Applicants

(By Advocate Shri Yogesh Sharma)

-Versus-

1. Union of India through
Secretary, Ministry of Health &
Family Welfare, Govt. of India,
Nirman Bhawan, New Delhi.
2. Director General of Health Services,
Nirman Bhawan, New Delhi.
3. Chief Administrative Officer,
Lady Hardings Medial College
And Sucheta Kriplani Hospital,
Bhagat Singh Marg, New Delhi.
4. Secretary,
Ministry of Finance,

Government of India,
North Block, New Delhi.

-Respondents

(By Advocate Shri R.V. Sinha)

O R D E R

Mr. Shanker Raju, Hon'ble Member (J):

Respondents' office memorandum dated 27.6.2002 is being assailed, whereby request of applicants for grant of skilled grade as Tailors had been turned down. A direction has been sought to accord consequential benefits and arrears.

2. Applicants are Tailors in the Lady Hardinge Medical College and Smt. Sucheta Kriplani working in the pay scale of Rs.2610-35140/-. They had been performing, as per the certification by the hospital, the work of stitching and cutting, which is a skilled work and are middle passed. They also possess diploma etc. Whereas the Third Central Pay Commission recommended a pay scale of Rs.330-560 for the Tailors, which was recommended by Government in other Ministries, including Ministry of Welfare. An award accorded in Central Public Works Department (CPWD) on reclassification of the trades Tailors had been brought in the skilled category and were placed in the pay scale of Rs.330-560. A representation jointly preferred for grant of same pay scale on the plea that the work performed by applicants is of skilled category when not responded to, led to filing of OA No.1499/98, which was disposed of on 1.1.2001 with a direction to respondents on their admission as to

pendency of an Anomaly Committee of Ministry of Health and Family Welfare to consider the matter of promotional avenues of applicants by a reasoned order.

3. An order passed on 27.6.2002 rejected the claim of applicants on the ground that the post in the hospital as well as in other Government hospitals of Tailor is unskilled, whereas in CPWD the post of Tailor was placed in the skilled category and accordingly was placed in the skilled category in revision of the pay scale by the subsequent Pay Commissions. The aforesaid led to filing of the present OA, which was disposed of on 22.1.2004 with a direction that the matter in dispute be referred to the Board of Arbitrator by means of agreement between the parties. The aforesaid was challenged before the High Court in CWP Nos.17217-20 of 2004. By an order dated 6.12.2005 the matter was remitted back to the Tribunal for consideration of dispute on merits, without treating the observations as merit consideration.

4. Learned counsel appearing for applicants Shri Yogesh Sharma contended that from the comparison of duties and responsibilities attached to the post of Tailor, educational qualifications, recruitment rules etc., applicants in the hospital are performing the duties of Tailor, which includes the skilled work of stitching, repairing, sewing, etc., are on a higher functioning than Tailors in CPWD. The discretion in

the matter of skilled grade and same pay scale offends the doctrine of 'equal pay for equal work'.

5. Learned counsel would contend that decision of the Calcutta Bench of the Tribunal in OA-1453/98 decided on 8.3.2000 in **Basanti Soren v. Union of India & Ors.**, categorically held the trade of Tailor as a skilled one. As such, now rejection of the request of applicants by the Ministry of Finance of parity of pay scale to be treated as skilled cannot be countenanced, as it would amount to infiltrating the arena occupied by judicial pronouncement and by referring to the decision of the Apex Court in **Vijay Singh Rao v. the State of Haryana & another**, 1986 (1) SLR 455, it is stated that in the matter of administrative exigency by finance department the same has no legal and binding force.

6. Learned counsel would contend that while the administrative control Ministry of applicants have forwarded the case for grant of skilled grade to applicants and arrears thereof, on revision the Ministry of Finance rejected the case on mere *ipsi dixit* without dealing with the question of finding of the Anomaly Committee and also the fact that Tailors had been discriminated as skilled category, which is no more *res integra*. In nut shell, what has been stated is that there has been non-application of mind by respondents to the contentions raised. A reliance has been placed on a decision of the Apex Court in **P.**

Savita & Ors. v. Union of India & Ors., 1985 (Supp.) SCC 94, to substantiate the above.

7. On the other hand, learned counsel appearing for respondents vehemently opposed the contentions and stated that the Ministry of Finance has turned down the request and applicants by virtue of this OA are seeking from Group 'D' the benefit of Grade III skilled category, which is not maintainable in the light of the decision of the Apex Court in **P.U. Joshi v. Accountant General**, 2003 (2) SCC 632. Learned counsel has also relied upon the decision of the Apex Court in **Union of India & Ors. v. Pradip Kumar Dey**, 2000 (5) SLR SC 764, where it is laid down that courts are not competent to grant parity of pay etc.

8. Learned counsel further stated that in none of the Government hospitals the post of Tailor has been designated as skilled category, rather they are semi skilled and applicants are performing the duty of stitching standard covering apparels for various hospitals staff and it does not require any specialization or proficiency. As it is stated that there is no parity between the CPWD Tailors and applicants, the decision conveyed is legal.

9. On careful consideration of the rival contentions of the parties when we pointed out as to setting up of the Anomaly Committee, as reflected in OA-1499/98, it is fairly stated that no such Anomaly Committee has ever been constituted and rather Ministry of Health

and Family Welfare recommended for grant of skilled grade to the Tailors but was not acceded to by the Ministry of Finance.

10. Learned counsel when pointed out whether the question of the Tailors being in the skilled category and are more qualified than the Tailors in CPWD and consideration thereof, it is fairly stated that the order does not reflect the same and at best the matter would be sent back for reconsideration.

11. We have perused the record produced by respondents. As per the record though there was no Anomaly Committee constituted but the Ministry of Health and Family Welfare had fairly submitted to the Ministry of Finance a proposal to bring the case of applicants for grant of skilled grade at par with the Tailors in CPWD while giving justification of parity in the pay scale the duties performed and the qualifications attached. However, this has not been acceded to by the Ministry of Finance. Ministry of Finance has ruled that applicants had always been placed in the unskilled category. The decision of the Guwahati Bench of the Tribunal in OA No. 158/94 dated 19.10.1995 clearly rules admissibility in the skilled category. In CWP No.9539/2003 in **Union of India v. Surinder Singh & Ors.**, decided by the High Court of Delhi on 19.4.2006, the claim of tent menders, who have been accorded pay scale of skilled category of

Tailors, was allowed by the Tribunal, against which the High Court was approached. It was observed:

"3. The issue pending consideration relates to the tent menders working in the ordinance depot in the army. It is not in dispute that the tailors and the tent menders are similarly situated. The claim of being a skilled worker by the tailors was taken up before the Guwahati Bench before CAT vide its judgement dated 19-10-1995 in OA 158/1994 which was preferred by the tailors. The said order of the tribunal was challenged in the Hon'ble Supreme Court and by order dated 11-07-1996 in SLP Civil No.2929/1996 the SLP was dismissed. A review petition preferred against the said order by the Union of India was also dismissed on January 28th 1997. Mr. Bhardwaj, learned counsel for the petitioner had challenged the tribunal's order by submitting that the Guwahati Bench judgement of the of the tribunal was dealt with by a Full Bench of the tribunal and a view in favour of the Union of India was taken. Counsel for the petitioner submitted that since an expert had evaluated the competence of the respondent tent menders and found them to semi-skilled it was not open to the tribunal to grant them the status of the skilled workers. Before going to the merits of the case it would be appropriate to note that the impugned judgement of the tribunal was delivered on 02-12-2002. The said judgement granted the petitioner Union of India three month's time to implement the judgement. It is stated that the extension of time to the petitioner Union of India was also sought eventually. Further six months' time was granted by the tribunal to implement the judgement. Without implementing the judgement the order was not complied with during the extended period and eventually led to filing of the contempt petition in the tribunal. It is not disputed that the order has now been complied with. Consequently, we are in a situation where the tent menders in Guwahati Bench by virtue of the affirmation of the view taken by the Guwahati Bench of

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the CAT enjoyed the status of the skilled workers whereas the Union of India, the petitioner herein, contends in Delhi such tent menders to be unskilled workers. Taking into account the fact that the judgement of CAT Guwahati was affirmed by the Hon'ble Supreme Court by the dismissal of the Special Leave Petition and that the petitioner has approached this court not only after the expiry of the time originally given by the tribunal but even after the extended period granted by the tribunal we are satisfied that no interference under Article 226 is called for. The writ petition is accordingly dismissed."

12. If one has regard to the above, the Guwahati Bench's decision where the Tailors have been placed in the skilled category having been affirmed by the Apex Court has become a binding precedent on us. The High Court has also ruled that being a precedent the same has to be followed.

13. If one has regard to the above, the finding of the Guwahati Bench, as affirmed by the Apex Court as to the Tailors being in the skilled category and more particularly when the respondents have certified that applicants are doing skilled work clearly brings them within the ambit of skilled category. The decision of the Finance Ministry, which is still a decision of an administrative Ministry, the decision of the High Court would apply. Moreover, in the matter of administrative instructions judicial power cannot be taken away by executive power, as held by the Apex Court in a Constitution Bench decision in **Pratap Singh v. State of Jharkhand**, 2005 (3) SCC 551. Moreover, as held by the Apex Court in **Anil Ratan Sarkar & Ors. v.**

State of West Bengal & Ors., 2001 (5) SCC 327, if an arena is covered by judicial order, the same cannot be infiltrated by administrative instructions. In nut shell, once there has been a finding of Tailor being in the skilled category, the same cannot be interfered or scuttled out by an administrative instruction.

14. In the light of the above, we find that though respondents are estopped from approbating and reprobating at the same time, once in the earlier OA their counsel had made a categorical statement that an Anomaly Committee was constituted, had not constituted the committee but a reference by the Ministry of Health as to the grant of skilled grade and higher pay scale to applicants was favorably considered and recommended to the Ministry of Finance for action. At this juncture, Ministry of Finance in their decision, now being impugned, had not at all taken into consideration the above aspect of the matter of applicants being in the skilled category as Tailors and also that they are qualified to be accorded the benefit of skilled category in the context and comparison with the Tailors in CPWD. Comparability in all functional requirements, recruitment and discharge of duties had not been considered. An administrative order when assumes the shape of a quasi judicial order and discretion is vested; the aforesaid discretion has to be exercised in a judicious manner. When factual position has not been considered or reasons have not been assigned, the order cannot be sustained in law

being passed in pursuance of non-application of mind and a bald order. In the matter of 'equal pay for equal work' or a policy decision, the policy decision of the Government though not amenable to judicial review, yet whereas this policy decision has violated the scope of Articles 14 and 16 of the Constitution of India, in a judicial review courts are empowered to send back the matter for reconsideration to Government when a decision has not been in accordance with law. We are fortified in this view of ours by a decision of the Apex Court in **Union of India v. K.S. Okkuta**, 2002 (10) SC 226.

15. In the light of the above we have no doubt in our mind and are of the considered view that the consideration, which has culminated into an order passed on 27.6.2005, is without application of mind and without dealing with the contentions raised by applicants and the factual position then existed.

16. In the result, for the foregoing reasons, OA is partly allowed. Impugned order is set aside. The matter is remitted back to respondents for reconsideration by detailed and speaking order, to be passed, within a period of three months from the date of receipt of a copy of this order. It, however, goes without saying that while such consideration takes place the observations made above shall also be given due consideration. In the event claim of applicants