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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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W.P.(C) 4604/2013

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Date of decision: 1st August, 2013

DRUPAD JANARDAN WATOLE & ORS Petitioners

Through : Mr. Avneesh Mishra, Adv.

versus

UNION OF INDIA & ORS Respondents

Through : Mr. Himanshu Bajaj, Adv.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE DEEPA SHARMA

GITA MITTAL, J. (Oral)

1. The petitioners were initially appointed to the post of Survey Draftsman in the year 1987 to 1996 and with effect from July 6th 1996 were merged with overseer being same nature of duty and pay scale with the Border Road Organization. This petition has been filed by the petitioners praying to pay salary in the same pay scale/pay band with grade pay as was paid to Ghan Shyam Vishwakarma pursuant to the decision passed by the Gauhati High Court (Aizawl Bench) in W.P.(C)No.51/2009.

2. The Border Roads Organization implemented the recommendations of the 5th Central Pay Commission with effect from January 1, 1996 and started paying a higher salary to

Overseers and Superintendents BR Grade-II who were direct recruits and possessed either a diploma or a degree in the applicable field i.e. Electrical or Mechanical; depending upon the stream. This was denied to promotee Officers who joined as Masons, Carpenters etc. and earned promotion. The reason for denying the parity in pay-scale was by drawing a distinction between Officers holding a diploma or a degree and those not holding a diploma or a degree. This action was held to be discriminatory and was quashed. Mandamus was issued that same scale of pay benefit, as recommended by the Pay Commissions, be accorded to for the reason the Pay Commissions did not draw any such distinction while making their recommendations.

3. The decision of the Aizawl Bench of the Gauhati High Court was unsuccessfully challenged before the Supreme Court. Qua Ghan Shyam Vishwakarma, the same has been implemented as also qua many more who filed similar petitions.

4. Learned counsel for the respondents has placed before us a copy of the letter No.17303/DGBR/Non-Diploma/213/LC-DLI dated 23rd July, 2013 conveying the decision of Ministry of Finance (Department of Expenditure) Government of India implementing the above orders. The relevant extract of the letter reads as follows:-

“In this connection it is initiated that the grant of pre-revised pay scale of Rs.5000-8000 to all non –diploma OVSR/SUPBR2, CHMECH/CHELECT/SUPEM2 is under active consideration of the Govt. (A copy of

Sectt BRDB note ID NO.BRDB/10/1379/2012/GE-I dated 08 JUL 2013 and Ministry of Finance (Deptt. Of Expenditure) UO No.10(17) E.III.B/2012 dated 26 Jun 2013 are enclosed).

3. As per para 3 of MoF note dated 26 Jun 2013, we have to submit details of non-litigants. Hence all projects and GR is required to submit details of OVSR/SUPBR2, CHMECH/CHELECT/SUPEM2 etc. similarly placed, but who have not gone to court and are supposed to be given benefits. Please submit above details by 31 Jul 2013.

4. You are therefore requested to apprise all similarly placed personnel accordingly and advice them not to go for further litigation till decision is taken by Govt.

5. This letter may be dissiminated upto platoon level.”

5. Despite repeated directions, the respondents are granting benefits only to such persons who approached the court which is legally impermissible.

6. The decision in the instant case related to application of policy decision. This court in several orders including the order dated 17th December, 2012 passed in ***WP(C)No.5040/2012, Prabhdial Singh & Ors. v. Union of India & Ors.*** has specifically directed that the decision has to be implemented in rem.

7. We accordingly allow this writ petition directing that the petitioners working as Overseer with the Border Road Organization be accorded the benefit of recommendations made by the 5th and 6th

Central Pay Commissions as was accorded to, to Ghan Shyam Vishwakarma.

8. Arrears would be disbursed within a period of 12 weeks from today.

9. Inasmuch as the petitioner has been compelled to approach this court and judicial time has been wasted in having to consider the adjudication of the subject matter, the respondents are liable to pay costs.

10. It is made clear that in case of failure to follow the law laid down by the court and if the directions of the court are not strictly being adhered to, the same would render the respondents liable for appropriate action under the Contempt of Court Act. Further it is made clear that in case the respondents do not comply with the directions made by this court vide order dated 6th September, 2012, we would not hesitate to proceed against them as per law.

11. Having regard to the above, a direction is issued to the respondent to consider the petitioners' case with respect to all such persons who hold the similar posts. We reiterate the directions made by this court specifically directing that the decision taken by the respondents with respect to the adjudication by the Guwahati High Court in W.P.(C) No. 51/2009 filed by Ghanshyam(supra) would be applicable to all persons holding the posts of Overseers and Superintendent Grade II in BRO.

12. In view thereof, the respondents are additionally directed to pay the costs which are quantified as follows :-

(i) The respondents shall pay an amount of Rs.500/- to the petitioner which shall be paid additionally along with next month's salary and other allowances.

(ii) The respondent shall deposit an amount of Rs.15,000/- with the Delhi High Court Mediation and Conciliation centre within two weeks from today.

The writ petition is allowed in the above terms.

(GITA MITTAL)
JUDGE

(DEEPA SHARMA)
JUDGE

AUGUST 01, 2013
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