

\$~8

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

+ **W.P.(C) 6669/2015 and CM No. 12162/2015 (Stay)**

Date of Decision : 25th November, 2016

UNION OF INDIA & ORS. Petitioners
Through Mr. B. K. Berera, Advocate

versus

HARI SINGH & ORS. Respondents
Through Mr. A. K. Trivedi and Mr. Ashok K. Vij, Advocates

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

1) Union of India through the Secretary, Ministry of Defence, The Engineer in Chief and the Garrison Engineer (I), has filed this writ petition impugning the order dated 18.03.2015 passed by the Principal Bench of the Central Administrative Tribunal whereby O.A. No. 3335/2013 filed by Hari Singh, Murti Devi, Mehar Chand, Dharam Singh and Mangat Ram has been allowed, directing that they would be paid arrears from the date of initial appointment/promotion to the post of Valveman or 16.10.1981, whichever was later.

2) Respondent nos. 1, 3 and 4, namely Hari Singh, Mehar Chand and Dharam Singh, respectively, retired from the service on attaining

the age of superannuation in 2008. Respondent no. 2-Murti Devi is the wife of Madan Lal who died while serving as a Valveman on 22.09.2011. Respondent no. 5-Mangat Ram superannuated on 30.11.2013.

3) Identical dispute with regard to the pay scale applicable to Valveman was examined by the Jodhpur Bench of the Central Administrative Tribunal in O.A. No. 51/2002 titled Tulsa Ram & Ors. Vs. Union of India & Ors. The said O.A. was allowed vide the order dated 18.10.2002, directing the respondents, who are the petitioners before us, to grant pay scale of Rs.260-400/Rs.950-1500 to the applicants from the date of their initial appointment as Valveman within three months. The direction was challenged by way of a Special Leave Petition (SLP) which was dismissed. Following this decision, OAs filed by other Valvemen were allowed by different benches of the Tribunal.

4) Counsel for the petitioner however, submits that the Chandigarh Bench of the Central Administrative Tribunal in O.A. No. 320/PB/2001 titled Thalakan A. and Ors. Vs. Union of India and Ors., while accepting the entitlement to pay scale of Rs.260-400/Rs.950-1500, had applied the law of limitation and had granted partial relief stating the pay in the said pay scale would be fixed notionally from 16.10.1981 but actual arrears would be restricted to the period of 18 months prior to filing the O.A. The writ petition filed by the Valvemen, challenging the said order, was dismissed by the High Court of Punjab and Haryana. Similarly the Jammu and Kashmir High Court in SWP No. 1698/2012 titled The Chief

Engineer, Air Force Zone Udampur Vs. Abdul Majid Hayan & Ors., vide order dated 18.10.2012, had restricted the benefit to the period of 18 months prior to filing the O.A. The SLP filed before the Supreme Court against the order dated 18.10.2012 was dismissed.

5) Learned counsel for the respondents submits that the order passed by the High Court of Jammu and Kashmir in SWP No.1698/2012 pertains to Skilled Caneman whereas the order dated 18.10.2002 passed by the Jodhpur Bench of the Tribunal pertains to Valveman.

6) Learned counsel for the respondents, has urged that the issue of arrears stands settled and decided vide the earlier order dated 31.03.2008 of O.A. Nos. 2098/2007, 2166/2007 and 2380/2007 filed by the present respondents. Relevant Portion of the order dated 31.03.2008 of the Tribunal in O.A. Nos. 2098/2007, 2166/2007 and 2380/2007, reads as under:-

“9. We, therefore, hold that the applicants will be entitled to the benefit of higher pay scale, recognizing them as skilled group, but the consequential benefits will be claimable by them, depending upon the final outcome of the appeal now pending before the Hon’ble Supreme Court in SLP 4932/2003 and SLP 11442/2003. The above direction be incorporated in the orders to be passed by the Hon’ble Supreme Court in the above cases. With these directions OAs stand disposed of. No costs.”

7. The respondents’ submit that the direction given therein would operate as *res judicata* notwithstanding the different view taken in the other aforementioned decisions.

8. However, learned counsel for the petitioners submits that the Tribunal while passing the order dated 31.03.2008 had not gone into the merits of the case.

9. The Tribunal in their order dated 31.03.2008 had used the expression “the consequential benefits will be claimable by them depending upon the final outcome of the appeal pending before the Hon’ble Supreme Court”. It is limpid and obvious that the Tribunal had directed that the directions or the orders passed by the Supreme Court would be incorporated and treated as part of the order dated 31.3.2008 passed in O.As filed by the respondents. It is accepted and admitted that SLP Nos. 4932/2003 (sic.) and 11442/2003 had been preferred by the petitioners against the decision taken on 18.10.2002 passed by the Central Administrative Tribunal, Jodhpur Bench in the case of Tulsa Ram & Ors. Vs. Union of India & Ors. In the said case as noted above the Valveman were granted arrears/back wages from the date of their initial appointment.

10) The present O.A. was filed by the respondents herein, only for the implementation of the aforesaid direction in order dated 31.03.2008 passed in O.A. Nos. 2098, 2166 and 2380 of 2007. Therefore, the scope of inquiry was very limited and confined to, whether or not the petitioners, had complied with the directions given in the order dated 31.03.2008 as the SLP Nos. 4932/2003 (sic.) and 11442/2003, had been dismissed.

11) The petitioners having not challenged the order dated 31.03.2008, it would not be appropriate and correct to deny the same benefit to the respondents as had been extended to the applicants who

had filed O.A. No.51/2002 before the Jodhpur Bench of the Tribunal. The direction given in the order dated 31.03.2008, quoted above had postulated that the “consequential benefit” i.e. the question of arrears would abide by the decision of the Supreme Court in Tulsa Ram Case. This being the specific direction, once the SLPs filed by the petitioners’ were dismissed, they are obliged to apply and grant identical benefit and relief to the respondents. The specific direction given in the order dated 31.03.2008 cannot be re-written and erased in the present writ petition questioning the order dated 18.03.2015 in O.A. No.3335/2013.

12) In view of the above, we do not find any merit in the writ petition. Accordingly, the writ petition as well as pending applications are dismissed, with no order as to costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

NOVEMBER 25, 2016

b