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

+ **W.P.(C) 1783/2016 and CM Appl. 7631/2016 (Stay)**

UNION OF INDIA THROUGH:

THE SECRETARY MINISTRY OF DEFENCE & ORS.... Petitioners

Through: Mr. Arun Bhardwaj, CGSC with Mr.
Nikhil Bhardwaj, Advocate.

versus

ASHOK KUMAR

..... Respondent

Through: Respondent in person.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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10.02.2020

1. The Petitioner has challenged the order dated 7th August, 2015 passed in OA No.703/2012 by Central Administrative Tribunal (CAT), Principal Bench, New Delhi by invoking the writ jurisdiction of this Court.

2. In brief, the facts are that the Respondent was appointed as Compressor Attendant Pump on 9th February, 1983 which was a semi-skilled job in Group-D having a pay scale of Rs.210-290/-. On 16th October, 1981 and 22nd August, 1983, Ministry of Defence, Government of India had issued orders that the pay scale of Rs.210-290/- was payable to semi-skilled category in the military farms and placing reliance on these orders the Respondent had represented claiming fixation of pay as a skilled worker in the pay scale of Rs.260-400/-, which corresponds to the pay scale assigned

to skilled category of workers. The Respondent had relied upon entry at serial no. 7 which indicated that revised pay scale of Compressor Attendant Pump Operator Tubewell stood revised from Rs.260-350/- to Rs. 260-400/-. As per the Petitioners, this benefit was not available to the Respondent as those were all Group 'C' skilled posts hence representation of the Respondent was rejected by Petitioners on 07.12.2010.

3. On 15th October, 1984, Government of India issued an order conveying the sanction of Government of India for upgradation of certain jobs of semi-skilled grade (Rs.210-290/-) to the skilled grade (Rs.260-400/-) and those jobs were namely of Pipe Fitter and Turner. On 16th January, 2008, in furtherance of the earlier office letter dated 09.02.1983 pay scale of Compressor Attendant Pump semi-skilled was amended from Rs.210-290/- to Rs.260-400/-. On 12th August, 2011, Ministry of Defence issued an order to the effect that the Respondent having been appointed as Group 'D' staff as a Compressor Attendant Pump on a semi-skilled post in the pay scale of Rs.210-290/- and his post was reflected at serial no. 8 and after revision he was retained at the same pay scale i.e. Rs.210-290/-.

4. Respondent filed OA No.703/2012 in the CAT challenging the order dated 07.12.2010 through which his earlier representation was rejected as well as he challenged order dated 12th August, 2011 in which he was termed as a semi-skilled post holder and he sought a direction seeking skilled grade of Rs.260-400/- along with interest. The main challenge was based on the fact that all the similar posts which were earlier in the semi- skilled scale were then upgraded to posts in the skilled scale of Rs.260-400/-, so there

could not be discrimination qua the Respondent.

5. Reliance was also placed upon the orders of the Hon'ble Supreme Court which has upheld the pay scale of Rs.260-400/- granted to a semi-skilled worker earlier in the pay scale of Rs.210-290/-. The Respondent also submitted that the qualification for this post was matriculation with ITI, so it cannot be termed as a semi-skilled post and even the post of Pipe Fitter was placed in the scale of Rs.260-400/- and the Respondent was earlier granted pay scale of Rs. 260-400/- vide order dated 16th January, 2008.

6. A reply was filed by the Petitioners before CAT reiterating that the present Respondent was appointed as Compressor Attendant Pump Operator which is a semi-skilled Group D post in military farms in the pay scale of Rs.210-290 and after accepting the said appointment now the Respondent cannot claim a higher pay scale of Rs.260-400/-, which is applicable only to a skilled post holder.

7. The CAT by its judgment dated 07.08.2015 allowed the OA and quashing the letters dated 07th December, 2010 and 12th August, 2011. It was observed that pay scale of Rs.260-400/- could not have been withdrawn by the Department and the Respondent be granted pay scale of Rs.260-400/- from the date of his appointment with consequential benefits of pay fixation, arrears and ACP but no interest was granted.

8. The said order has been challenged by Petitioners by filing this writ petition on the grounds that Respondent was working in a semi- skilled post

with a pay scale of Rs.210-290; order of the Hon'ble Supreme Court in W.P.(C) 492/1991 was not available on record of the CAT so reliance was mistakenly put on the said order; the grade of Rs.260-400/- corresponds to the skilled category and not to the semi- skilled ones. It was also submitted that the learned CAT had reached to an erroneous conclusion that all the workers appointed in the semi-skilled category in the pay scale of Rs.210-290 were entitled to upgraded pay scale of Rs.260-400/-.

9. On 2nd March, 2016, the following order was passed by this Court by which notice was issued limited to the question whether the Respondent would be entitled to pay scale of Rs.260-400/- from the date of his appointment or he would be entitled to the said pay scale from the date of letter dated 16th January, 2008 or from some other date:

“The challenge in the present writ petition is to the order dated 7.8.2015 passed in OA No.703/2012 wherein the following directions have been issued:

"We further direct the respondents to grant the pay scale of Rs.260-400 to the applicant w.e.f. the date of his appointment with consequential benefits of pay fixation, arrears and ACP. Considering the facts and circumstances of this case, we are not inclined to grant any interest on arrears. This exercise will be completed within a period of eight weeks from the date of receipt of a certified copy of this order. No costs. "

The respondent was appointed as a Compressor Attendant Pump Operator in Military Farms, Ministry of Defence on 9.2.1983. The appointment letter mentions that appointment was in the category of semi-skilled grade in the pay scale of Rs.210-290. Subsequently, the respondent had made a number of representations relying upon the decision of the Supreme

Court dated 22.7.1998 in WP(C) No.492/1991 titled Prabhu Lai vs. UOI & Ors. wherein direction was given that workers in the semi-skilled category were entitled to pay scale of Rs.260-400 with effect from 16.10.1981. On the basis of the said direction, during 1999 to 2006, semi-skilled posts were granted the skill grade, but the claim of the respondent for upgradation of scale remained pending.

The impugned order records that the issue of upgradation to scale to Rs.260-400/- was examined and by the letter dated 16.1.2008, the Headquarter, Southern Command informed the Military Farm as under:

"RECRUITMENT OF GROUP 'D' STAFF (Semi - skilled) Compressor Attendant Pump

1. Further to this Office letter of even No. dated 09 Feb 83.
2. In terms of Govt of India Min. of Def CM No.F.1 (2)/80/D(ECC)/IC) dated 16"" October, 1981, F.1 (2)/80/D (ECC/IC) dated 22"" August 1983 and 53281/Org-4(Civ)(d)/56/D(Civ-I/98 dated 22"" July 1998 the following amendment may please be made in Pay Scale of Compressor Attendant Pump (Semi Skilled) as mentioned in this HQ letter under reference:-

For: 210-4-226-EB-4-250-EB-5-290

Read: 260-6-290-EB-6-326-8-366-EB-8-390-10-400"

Thus, with effect from 6.2.2008, the respondent's pay was fixed in the skilled grade of Rs.260-400.

The petitioners after two months on 29.4.2008 withdrew the said scale by their letter dated 6.2.2008. The said action had prompted the respondent to approach the Tribunal in the aforesaid OA.

The stand taken by the petitioners before the Tribunal was that the initial appointment of the respondent was made by the Director, Military Farm, Command Headquarter, Pune (in

Group D semi skilled post). Consequently, the respondent was not entitled to pay scale of Rs.260-400/-, payable to a skilled post in Group C. The Tribunal has rightly rejected the said contention as untenable and irrational. The Tribunal has proceeded on the basis that semi-skilled workers were placed and granted skill grade in the pay scale of Rs.260-400. This factual position was not questioned and challenged by the petitioners before the Tribunal. The authority who had issued the appointment letter would not determine and decide whether the respondent should be granted pay scale of Rs.260-400/-. It is not the case of the petitioners that other employees working as Compressor Attendant Pump Operator were not entitled to or paid the scale of Rs.260- 400/-. Payment of the said scale is an accepted position and not contested.

Learned counsel for the petitioners submitted that the decision in ***Prabhu Lal*** (supra) referred to by the Tribunal in the impugned order was possibly not on record before the Tribunal. It is apparent that the petitioner had not contested the ratio and directions given in ***Prabhu Lal*** (supra). Learned counsel for the petitioners has accepted that he has not read this judgment. We have quoted the Southern Command Headquarter's letter dated 16.1.2008. It is obvious that the said letter was issued after examining the aforesaid judgment as the letter accepts that the semi-skilled workers were granted pay scale of Rs.260-400/-.

Learned counsel for the petitioners during the course of hearing had drawn our attention to the chart, Annexure I (page 65 of the paper book), which gives pay scales. A Compressor Attendant Pump Operators were placed in the pay scale of Rs.260-350/- which was revised to Rs.260-400/-. The exact designation of the post held by the respondent in the present case as is apparent from paragraph 1 of the impugned order was Compressor Attendant Pump Operator, which is identical to the designation mentioned in the said pay scale chart at serial No.7, which for the sake of convenience is reproduced below:

7	COMPRESSOR	260-380	260-400
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	<i>ATTENDANT Pump Operator Tube Well M.H. 01 II</i>		
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Our attention was drawn to paragraph 5 of the impugned order which states that the petitioner shall pay to the applicant i.e. the respondent herein pay scale of Rs.260-400/- with effect from the date of appointment with all consequential benefits. It is pointed out that the petitioner had filed OA No.703/2012 in the year 2012 and at best he can rely upon letter dated 16.1.2008.

Issue notice, limited to the question whether the respondent would be entitled to pay scale of Rs.260-400 from the date of his appointment or would be entitled to the said pay scale from the date of letter of dated 16.1.2008, or some other date; returnable on 18th May, 2016.

We clarify that the respondent's present salary would be calculated as the directions given by the Tribunal. Payment of arrears prior to 16.1.2008 may not be made”.

10. The record of the CAT was filed along with the petition itself with documents. The contention in this case is now confined to the date of applicability of the enhanced pay scale of Rs. 260-400/-, i.e., whether the same is applicable from the date of appointment of the Respondent or from the date of the letter itself or from some other date.

11. The said letter dated 16th January, 2008 was filed before the CAT and the same is reproduced hereunder:

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16 Jan. 2008

Shri Ashok Kumar S/O Harishankar,
C/o Military Farm Deoali

RECRUITMENT OF GROUP 'D' STAFF (Semi - skilled)
Compressor Attendant Pump

1. Further to this Office letter of even No. dated 09 Feb 83.
2. In terms of Govt. of India Min of Def OM No.Fl(2)/80/D (ECC/IC) dated 16 Oct 1981 , *F.1(2)/80/D* (ECC/IC) dated 22 Aug 1983 and 53281/0rg-4(Civ)(d)/56/D(Civ-I/98 dated 22 Jul 1998 the following amendment may please be made in Pay Scale of Compressor Attendant Pump (Semi - Skilled) as mentioned in this HQ letter under reference:-

For : 210 - 4 - 226 - EE - 4 - 250 - EB - 5 - 290

.. .

Read: 260 - 6 - 290 - EB - 6 - 326 - 8- 366 - EB - 8 - 390 - 10 – 400

(AS Rathore)
Col
Director Military Farms

Copy to:

Mil Farm Deolali

-info and necessary action

The Dy Dte Gen Mil Farms (MF -1) for info wrt your HQ letter No 86578QMG's Br., IHQ of MoD (Army). /Q/MF-2 dated 27Jul 2007.
PIN - 900108, C/o 56 APO"

12. The above letter makes it clear that the scale of Rs.210-290/- is to be read as the scale of Rs.260-400/-. There is no confusion as to whether the said scale is applicable to the skilled category or to semi-skilled category as the letter itself makes it very clear as it is applicable to the Group D category (semi-skilled category) Compressor Attendant Pump, hence it is fully applicable to the present appellant Respondent and the letter nowhere states that it shall have the prospective effect, hence this letter is to be read as to be effective from the date of appointment of the Petitioner i.e. 9th February, 1983 itself.

13. In view of the above, the order of the CAT is hereby upheld. However, we grant 12 weeks' further time from the date of this order to the Petitioners to comply with the order of the learned CAT dated 07.08.2015 to grant scale of Rs.260-400/- to the Respondent from the date of his appointment with all consequential benefits. However, no interest on arrears is granted. If the payment of arrears is not made to the Respondent within 12 weeks, then the Petitioners shall be liable to pay simple interest @ 6% per annum for the period of delay.

14. This petition is dismissed. Pending application is also disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

FEBRUARY 10, 2020

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