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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of decision: 25.04.2024*

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W.P.(C) 5808/2024**UNION OF INDIA THROUGH THE SECRETARY MINISTRY OF
DEFENCE DEPARTMENT OF DEFENCE PRODUCTION AND
SUPPLIES & ANR. Petitioner****Through: Mr. Himanshu Pathak, SPC.**

versus

HARI RAJ SANGWAN & ORS.**..... Respondent****Through: Mr. Shivanshu Bhardwaj & Mr.
Mridul Gaur, Advs.****CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE SAURABH BANERJEE****REKHA PALLI, J (ORAL)****CM APPL. 24058/2024**

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CAV 200/2024

3. Since learned counsel for the respondents enters appearance, the caveat stands discharged.

W.P.(C) 5808/2024 & CM APPL. 24057/2024 (stay)

4. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 01.12.2023 passed by the learned Central Administrative Tribunal (the Tribunal) in O.A. No. 2332/2021. Vide the impugned order, the learned Tribunal has allowed the



Original Application (O.A.) filed by the respondents by quashing the communications dated 24.11.2020 and 24.09.2021 whereby the petitioners had sought to change the status of the respondents from Skilled Grade to Semi-Skilled Grade.

5. The brief factual matrix as emerging from the record shows that the respondents, who were working in different Ordinance Factories as Skilled Grade employees, sought voluntary transfer from their respective Ordinance Factories to the Ordinance Factory in Muradnagar. These requests for transfers were duly accepted by the petitioners and the respondents were, in accordance with the applicable Transfer Policy dated 29.11.2006 (hereinafter '2006 Transfer Policy'), transferred to Muradnagar as "Melter/Fitter" in the Semi-Skilled Grade. However, after the respondents had resumed work as Semi Skilled Grade employees in Muradnagar, the petitioners on 14.09.2018 issued a clarification to the 2006 Transfer Policy, wherein it was provided that while considering the case of an industrial employee for inter-factory transfer on compassionate grounds, no employee should be reverted to any Grade lower than Skilled Grade. Based on this clarification, the petitioners, vide orders dated 03.01.2019 and 17.10.2019, changed the status of the respondents from Semi-Skilled Grade to Skilled Grade w.e.f the date of their respective transfers to the Ordinance Factory, Muradnagar.

6. On 24.11.2020, the petitioners issued yet another order, stating therein that the clarification issued on 14.09.2018 would be applicable only prospectively i.e., to employees transferred after 14.09.2018. The petitioners, therefore, after issuing show-cause notices to the respondents, issued an order dated 24.09.2021, reverting them to the Semi-Skilled Grade



w.e.f the date they were, at their own request, transferred to Muradnagar. Being aggrieved with their reversion to the Semi Skilled Grade, the respondents approached the learned Tribunal assailing the orders dated 24.11.2020 and 24.09.2021 by way of an OA, which has been allowed under the impugned order.

7. It is in these circumstances, that the petitioner has approached this Court.

8. In support of the petition, learned counsel for the petitioners submits that the learned Tribunal has failed to appreciate that the clarification dated 14.09.2018 was issued only to grant benefits to the employees being transferred after the date of the notification and could not have been applied retrospectively. The respondents having voluntarily sought transfer prior to the issuance of the clarification dated 14.09.2018, could not be granted the benefit of the said Circular and therefore, they were not entitled to claim Skilled Grade upon their transfer to Muradnagar. Furthermore, the grant of the Skilled Grade to the respondents from the date of their transfer to Muradnagar will affect the seniority of those employees who were, from the very beginning, working at Muradnagar. He, therefore, prays that the impugned order be set aside.

9. On the other hand, Mr. Shivanshu Bhardwaj, learned counsel for the respondents, who appears on advance notice, supports the impugned order and submits that the petitioners having issued a clarification to the existing policy, could not claim that the clarification would apply only prospectively. He contends that a clarification to a policy, unlike an amendment thereof, applies from the very date of issuance of the policy and therefore, the learned Tribunal has rightly held that the clarification would apply



retrospectively and not from the date of the clarification. Furthermore, none of the employees, who have purportedly been affected by the grant of the Skilled Grade to the respondents, from the date of their inter factory transfer to Muradagar, had assailed the grant of this benefit and therefore, there was no reason for the petitioners to approach this Court.

10. Having considered the rival submissions of the parties, we may begin by noting herein below the findings of the learned Tribunal, as contained in paragraph 5 to 7 of the impugned order, which read as under:-

“6. Further, in our view, there is no ambiguity in the clarification on the inter-factory transfer policy issued on 14.09.2018, which has been quoted verbatim in one of the preceding paragraphs. It is important to note that the said clarification has been issued on account of some complaints which the Ordnance Factory Board received that some of the factories were reverting the employees on transfer to semi skilled grade and the said communication has held this decision to be 'totally inappropriate'. Once the action of conversion from skilled grade to semi skilled grade has been considered to be 'inappropriate the obvious corollary would be to rectify the situation and remove the element of inappropriateness. So obviously it will have to be implemented retrospectively. Moreover, in the case of the applicants their status as skilled grade was already protected, so what the respondents are doing by way of impugned communication is converting an appropriate decision into an impugned 'inappropriate' one, contrary to their own clarification.

7. In view of what has been stated above, the TOA is allowed and the impugned communications dated 24.11.2020 and 24.09.2021 are quashed and set aside as squashed the show cause notice issued on 09.10.2021. Pursuant to these directions, the status of the applicants



as skilled grade industrial employees as it existed prior to the issuance of the impugned orders stands restored with effect from the date on which the impugned communication was issued. Needless to say that necessary consequential benefits as would accrue to the applicants as a sequel to this order too shall be extended to them expeditiously. The directions contained herein shall be implemented in totality within a period of 8 weeks from the date of receipt of a certified copy of this order. No costs."

11. From a perusal of the aforesaid what emerges is that after examining the clarification to the 2006 Transfer Policy, issued by the petitioners on 14.09.2018, the learned Tribunal found that the same had been issued to redress the complaints received by them regarding industrial Skilled Grade employees being wrongly posted as Semi-Skilled Grade employees upon their inter factory transfer. The learned Tribunal, therefore, held that the order dated 14.09.2018, being in the nature of a clarification to the initial 2006 Transfer Policy, had to necessarily be made applicable w.e.f the date of the issuance of the policy itself and not from the date of clarification alone, as was being sought to be urged by the petitioners. Since learned counsel for the petitioners has vehemently urged that the clarification itself made it clear that the same was to be applied prospectively and not from the date of issuance of the policy, it would be apposite to note hereinbelow this clarification dated 14.09.2018 in its entirety. The same reads as under:-

"To

The Sr. General Managers' General Managers

AR Ordnance & Ordnance Equipment Factories

Sub: Policy Guidelines on Inter Factory Transfer of Industrial Employees



Ref: OFB I.r. No. 429/Policy/ A.I dated 29.11.2006

.....

A policy guidelines on inter factory transfer of Industrial Employees was circulated vide above referred letter which is still in force and is followed by all the Ordnance Factories. In the said guidelines, provision of transfer on reversion to lower grade is also prescribed.

Of late, OFB has received some complaints from the individuals as well as Unions that some IEs have been transferred to sister factories on reversion to Semi-skilled grade. In this connection, it is clarified that the appointment in Semi-skilled Grade (Level-1 in the Pay Matrix for Tradesman is made against the vacancy of Skilled Grade (Level-2 in the Pay Matrix) and Semi-skilled grade xxxx(Ineligible) period of the IEs appointed against Skilled grade (Tradesman). The said provision was amended xxxx(Ineligible) the Ordnance Factories in several correspondences viz OFB Circular No. xxxx(Ineligible) dated x4.12.2002 No.800/MACP/Axxxx(Ineligible) dated 13.07.2011 and No. xxxx(Ineligible) MACP 2017 dated 07.06.2017. Also, no separate sanctioned strength is allotted to Trademan Semi-skilled grade. Hence transfer on reversion to Semi-skilled grade it totally inappropriate.

In view of the above, it is directed that no Industrial Employee should be reverted to lower than Skilled Grade while considering the case of inter factory transfer on compassionate grounds in individual's own interest”

12. Upon a perusal of this clarification, we find that the same was not by way of an amendment but was issued only to deal with the complaints being received regarding Skilled Grade employees being wrongly posted as Semi-Skilled Grade employees upon their inter factory transfer. Even though learned counsel for the petitioners has vehemently urged that the same was to be made applicable only prospectively, we are unable to read any such condition in this clarification. It has, therefore, to be necessarily held that the circular dated 14.09.2018, being only clarificatory, was applicable from the date of the issuance of the policy itself. What clearly emerges from these facts is that the clarification dated 14.09.2021, has to be



read in conjunction with the 2006 Transfer Policy and therefore, the petitioners cannot be permitted to urge that the clarification would not be applicable from the date of the policy but only to those transfers which are effected after the date of the clarification, i.e 14.09.2018.

13. Furthermore, once the petitioners, after realising their mistake of wrongly downgrading the respondents to Semi-Skilled Grade on their transfer to Muradnagar, had, in accordance with their clarification dated 14.09.2018, corrected the said mistake by granting them the Skilled Grade vide orders dated 03.01.2019 and 17.10.2019, there was absolutely no occasion for them to recall these orders.

14. For the aforesaid reasons, we find no ground to interfere with the impugned order. The writ petition being meritless is, accordingly, dismissed with all pending applications

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

APRIL 25, 2024
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