

YOGENDRA NARAYAN CHOWDHURY AND ORS.

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v.

UNION OF INDIA AND ORS.

NOVEMBER 30, 1995

[K. RAMASWAMY AND S.B. MAJMUDAR, JJ.]

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Service Law :

Military Engineering Service—Mazdoors—Classification on the basis of III Pay Commission Report—Unskilled—Semi Skilled—Skilled and Highly skilled—Mazdoors—Passing of test by—Fitment into skilled category—Reversion to semi skilled category a feeder post to skilled category—Held valid.

C

Constitution of India, 1950 :

Article 136—Special leave Petition—Dismissal in limine—Held does not operate as res judicata.

D

Pursuant to the recommendations of the Third Pay Commission the Mazdoors working in the military engineering department were classified into four categories viz: (i) unskilled; (ii) semi skilled (iii) skilled and (iv) highly skilled. The pay scales for these categories respectively were (i) Rs. 196-232; (ii) Rs. 200-290; (iii) Rs. 260-400 and (iv) Rs. 330-480. Some of the Chowkidars and Mazdoors who passed the test were initially classified into skilled category and were given fitment in that scale. Later they were reverted to semi skilled category and given fitment accordingly. Directions were also issued to recover the arrears paid to them. These orders were challenged before different Benches of the Central Administrative Tribunal. The Cuttack Bench upheld the reversion to semi skilled category but directed not to recover the arrears. On the other hand a Calcutta Bench of the Tribunal held that the reversion was bad and consequently directed restoration of their category into the skilled category. On appeal decision of Calcutta Bench was dismissed *in limine* by this Court. In the meanwhile another Bench of Calcutta Tribunal followed the view taken by Cuttack Bench and upheld the reversion but set aside the order of recovery of arrears. Hence these appeals.

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Dismissing the appeals, this Court

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A **HELD : 1.** These cases do not warrant interference. It is not in
 dispute that semi-skilled is a feeder post for the skilled category. After
 B passing the test, Mazdoors are necessarily to be fitted first into semi-
 skilled category so that after putting required length of service and other
 considerations, they would become eligible for promotion into skilled
 grade. Obviously, realising this mistake they were later correctly given
 fitment into the category of semi-skilled and the appropriate scale of pay
 was assigned. It is not a case of reversion but one of proper fitment. Under
 these circumstances, the view of the first Bench of the Calcutta CAT is
 clearly erroneous in law and the view of the latter Bench of the Calcutta
 and of the Cuttack Bench are correct. [19-G-H, 20-A-C]

C **2.** The dismissal of Special Leave Petition *in limine* without assigning
 reasons does not operate as *res judicata*.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9312 of
 1995 Etc.

D From the Judgment and Order dated 13.2.91 of the Central Ad-
 ministrative Tribunal, Calcutta, in O.A. No. 946 of 1987.

A.S. Nambiar and Mrs. Sarla Chandra for the Appellants.

E K.N. Shukla, S.D. Sharma and Mrs. Anil Katiyar for the Respon-
 dents.

The following Order of the Court was delivered :

F In these appeals the only question is whether the appellants-motor
 pump attendants - are semi-skilled or skilled workers as determined in the
 Government circular dated May 11, 1983. After the III Pay Commission,
 mazdoors working in the military engineering have been classified as
 unskilled and their scale of pay is Rs. 196-232, semi-skilled Rs. 200 to 290;
 skilled Rs. 260 to 400 and highly skilled grade II Rs. 330-480, highly skilled
 G grade I Rs. 380-560. As a consequence of fitment, all the unskilled maz-
 doors, chowkidars who passed the test, were initially classified into skilled
 category and later it was discovered that it was a wrong classification.
 Consequently, directions were issued to fit them in the semi-skilled
 category and direction to recover the arrears paid during the period of
 1984 to 1986 was also given. Some of the persons came to challenge these
 H orders before different Benches of the Central Administrative Tribunal. In

the Cuttack Bench, the same categories of persons filed O.A. 382/87. The Tribunal held that they being unskilled are to be classified as semi-skilled since they had passed the test and the semi-skilled is a feeder post to the skilled category, namely, Rs. 260-400. Accordingly, while upholding the reversion, directed not to recover the arrears.

O.A. No. 796/87 was filed before the Administrative Tribunal, Calcutta Bench. In the first instance, the Bench had held that the reversion was bad and consequently directed restoration of their category into skilled category. When the matter was challenged by way of Special Leave Petition, that was dismissed in limine. In the meanwhile, another Bench of Calcutta Administrative Tribunal in the impugned order, following the Cuttack Bench, upheld the reversion but set aside the order of recovery of arrears. Thus these appeals by special leave.

Shri Nambiar, the learned senior counsel for the appellants contended that the appellants having passed the prescribed test became skilled and that, therefore, they were properly fitted into the grade of Rs. 260-400 in the year 1984 and their reversion to semi-skilled category i.e., Rs.210-290 is illegal. He further contends that the decision of the first Bench of CAT, Calcutta is proper and this Court had put seal of approval and that therefore the view of the latter Bench and that of the Cuttack Bench are clearly illegal. We find no force in the contention.

The Calcutta Bench in the first instance obviously proceeded on the wrong premise, namely, they passed the test and hence become skilled category workmen and also while holding those posts their performance was not found to be unsatisfactory. Therefore, the orders were held to have been vitiated by error of law. That is wholly misconceived view. The only relevant question to be considered is whether the Chowkidars and mazdoors working as motor pump operators and having passed their tests, would be fitted into the semi-skilled category or skilled category. It is not in dispute that semi-skilled is a feeder post for the skilled category. Once they had passed the test, they are necessarily to be fitted into semi-skilled category so that after putting required length of service and other considerations, they would become eligible for promotion into skilled grade. Under these circumstances, the necessary consequence would be that they would be fitted into the category of semi-skilled, consequent to the recommendation of the III Pay Commission. Obviously, realising this mistake the

- A latter Bench had held to fit them into the category of semi-skilled and assign the appropriate scale of pay. Being semi-skilled, their scale of pay indisputably is Rs. 210-260. Accordingly, their fitment is correctly assigned as semi- skilled and it is not a case of reversion but one of proper fitment. Under these circumstances, the view of the first Bench of the Calcutta CAT is clearly erroneous in law.

- B
- C It is settled law that even the dismissal of Special Leave Petition *in limine* without assigning reasons does not operate as res judicata. Under these circumstances, we are of the view that the view of the latter Bench of the CAT, Calcutta and of the Cuttack Bench are clearly consistent with the above reasoning. Therefore, we do not find that these are fit cases warranting interference. The appeals are accordingly dismissed. No costs.

T.N.A.

Appeals dismissed.