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**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.2321/2002

This the 7th day of May 2007

**Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Smt. Neena Ranjan, Member (A)**

Kawal Singh, s/o late Shri Balu Ram
Foreman Part II cadre
(Designated as Chargeman Grade I)
Ordnance Depot
Shakurbasti, Delhi-56

Residential Address:

Kawal Singh
A-2/372, Sector-8
Rohini, Delhi-85

..Applicant

(By Advocate: Shri GD Bhandari)

Versus

Union of India through

1. The Secretary
Government of India
Ministry of Defence, New Delhi-11
2. The Director General of Ordnance Services
Master General of the Ordnance Branch
Army Headquarters, New Delhi-11
3. The Officer in -charge
AOC Records Office
Trimulgherry PO
Secunderbad-500015 (A/P)
4. The Commandant
Ordnance Depot
Shakurbasti, Delhi-56

..Respondents

(By Advocate: Shri SM Arif)

ORDER

Hon'ble Shri Shanker Raju:

Following reliefs have been sought by the applicant in the
present OA:

"i) set-aside and quash Respondent No.3's order dated 01.05.2002, Annex. A-3, and Respondent No.4's orders dated 07.06.2002, Annex. A-1, being vitiated on the grounds humbly submitted in the foregoing paras.

ii) direct/order the Respondents not to implement Para 4 and 5 of Ministry of Defence letter dated 26.12.2001, Annexure A-2, as made subject to the framing of new RRs and actual benefit from the date of placement.

iii) order / direct the Respondents to implement recommendations of 5th Central Pay Commission with regard to 4 Grade Structure i.e. Foreman Rs.7450-11500, Asstt. Foreman Rs.6500-10500, Chargeman Gde-I Rs.5500-9000 and Chargeman Gde-II Rs.5000-8000, w.e.f. 01.01.1996, and distribution in the prescribed ratio of 5:25:25:45 as given in para 63.302 and 63.303 of the 5th Central Pay Commission report, already accepted and notified in the Gazette of India, Extraordinary dated 30.09.1997. Redesignating the post of Foreman and Asstt. Foreman as Gazetted, Non-ministerial may, however, be operated w.e.f. the date of issue.

iv) order / direct the Respondents to extend the benefit of 4 Grade Structure and distribution of post in the prescribed ratio of 5:25:25:45 from the date of implementation of the recommendations of the 5th Central Pay Commission and not from the actual placement of an individual in the particular post.

v) Order / direct the Respondents to make payment of the arrears of pay and allowances to the applicant after giving effect to the restructured post/grade from 01.01.1996 with interest thereon from 01.01.1996 to the date of actual payment.

vi) any other relief deemed fit and proper, may also be granted in the interest of justice with heavy exemplary costs against the Respondents and in favour of the applicant."

2. Applicant has been promoted as Foreman Part II cadre on 1.2.1988. Non-grant of uniform pay scales represented to where the cadre consisting of Chargeman and Foreman in AOC of the Defence Ministry, 3rd Central Pay Commission (CPC) recommended introduction of 5th uniform pay scales. This was not implemented. However, in 4th CPC, 4 grade structure was accepted by all the Departments and Ministries but not given effect to in AOC. The pay scale of Rs.2000-3200 at the 2nd level of Foreman was eliminated and Senior Chargeman and Chargeman when given one and the same

pay scale, the anomaly was gone into by Gautam Mitra Committee when not resolved in 5th CPC when claim of technical supervisory staff under Ministry of Defence was dealt with, paragraphs 63.302 and 63.303 recommended for 4 grade uniform structure and for distribution of the posts, a ratio of 45 : 25 : 25 : 5 for Chargeman Grades II and I, Assistant Foreman and Foreman was prescribed.

3. In the aforesaid recommendations on conversion of uniform grade structure, a direct recruitment was introduced to the extent of 33.1.3% from amongst 3 years' diploma holder in Engineering / B. Sc. at the level of Chargeman Grade II but nothing has been prescribed for Foreman and Assistant Foreman. Vide notification in part 'C', the Government approved the pay scales and Ministries have been asked to decide and agreed to the changes w.e.f. 1.1.1996. In the Defence Ministry, vide notification issued on 26.12.2001 recommendations of 5th CPC were accepted by the Government but recruitment rules for new grades are to be introduced and persons are to be inducted on redistribution after fulfilling the criteria. These orders have been made effective, as far as actual benefits are concerned, on actual placement of individual on different grades of restructuring.

4. The grievance of the applicant when raised in OA-1711/2000 in **M.M. Lal Sharma v. Union of India & others**, giving liberty to assail the grievance, the said OA was disposed of.

5. Further, vide Government of India's letter dated 14.6.2002, it is made clear that those, who could not be adjusted in the introduced ratio on not fulfilling the criteria, would not be reverted and the pay scales held by them would be treated personal to them till they wear

out by promotion, retirement, etc. Accordingly, on the revised 4 grade structure under 5%, 31 posts of Foreman and 152 posts of Assistant Foreman are deemed to be created. Foremen have been re-designated to Chargeman I without change of pay scale and Chargeman I remained Chargeman II with abolition of 72 posts in that cadre. The re-designation has been carried out w.e.f. 14.6.2002 and Ministry of Defence conveyed sanction of the President for grant of revised pay scale in respect of technical supervisory staff in AOC. Recruitment rules for Chargeman Grades I and II were accordingly notified.

6. Shri G.D. Bhandari, learned counsel for applicant contended that when the recommendations of 5th CPC were notified in part 'C', the same are deemed to be made effective and accepted by the Government and as such it is to be implemented not from 14.6.2002 but from 1.1.1996. An invidious discrimination is pressed by contending that whereas in other Departments of Ministry of Defence, the recommendations have been accepted from 1.1.1996 but the same without any justification has been implemented from 2002, which is not in accordance with Articles 14 & 16 of Constitution of India.

7. Learned counsel has also relied upon DOPT's OM of 14.2.1992 whereby on revision of pay scale and upgradation of the posts, it is demonstrated by the applicant that there is no change in the number of posts and this upgradation only involves a higher replacement scale without any additional responsibility. The suitability of the applicant need not to be assessed and they be appointed with the higher replacement scale from the date of notification.

8. In this view of the matter, learned counsel contends that as the applicant has been working since 1988 as Foreman, pay scales of Rs.6500-10500 and Rs.7450-11500 should be accorded to him, as 5th CPC's recommendations would not affect the vested right of a person retrospectively and what has been prescribed is only direct recruitment to fresh appointment and as in paragraph 63.303, there is no indication to the post of Foreman, the same would not be inducted on higher qualification from the erstwhile candidates in case of upgradation.

9. Learned counsel has also relied upon the decision of the Tribunal in **Rajbir Singh & others v. Union of India & others** (OA-2657/2000) decided on 20.2.2002 whereby the applicants therein were accorded the higher replacement scale.

10. It is stated that once the others have been given replacement scale irrespective of recruitment rules or selection, why a discriminatory differential treatment has been meted out in the cadre of Foreman?

11. By showing the chart, it is also contended by learned counsel that upgradation does not bring any change in the number of posts to be treated as an upgradation and condition for new recruitment rules would not apply. Only qualification of number of years for upgradation and grant of scale is envisaged.

12. Learned counsel also stated that once the new recruitment rules are promulgated, it would be prospective in nature and would

not alter in any manner the vested right of a person without affording him an opportunity.

13. On the other hand, Shri S.M. Arif, learned counsel for respondents vehemently opposed the contentions and stated that the decision in **Nasib Singh & others v. Union of India & others** (OA-375/2004 with connected OA) decided on 6.7.2005 has been implemented.

14. Learned counsel states that applicant's pay scale has not been changed and there is no reversion of the applicant. All others have been accorded payments from 1.1.1996 irrespective of the fact whether Assistant Foreman or Foreman.

15. It is also stated that if a person is working as Foreman, the grade is to be given and as Foreman's post has been re-designated as Chageman Grade-I, the Government on its wisdom is free to accept the recommendations of the 5th CPC, which have been accepted with prospective date and the applicant has been given all the benefits as per restructuring prior to his retirement. However, having failed to qualify the eligibility criteria laid down for revised pay scale under the recruitment rules, for which minimum qualification is B.Sc. whereas the applicant is Matriculate, his claim is misconceived.

16. Learned counsel would also contend that even in re-distribution, recruitment rules would operate prospectively, which is from August 2006.

17. We have carefully considered the rival contentions of the parties and perused the material placed on record.

18. It is trite that recommendations of Pay Commission are not binding on the Government. It has to be considered by the Government in respect of intricacies and consequential follow up procedure. Financial position is also one of the relevant considerations. However, when such non-acceptance is arbitrary or violative of Article 14 of Constitution of India, the same can be interfered with, as held by the Apex Court in **State of Punjab & others v. Amar Nath Goyal & others**, 2005 SCC (L&S) 910.

19. Having regard to the above, what we find from the above recommendations of 5th CPC contained in paragraphs 63.302 and 63.303 that in AOC when existing structure in technical supervisory staff was Chargeman and Foreman, two new grades of Chargeman Grades I and II, Assistant Foreman and Foreman were introduced to be distributed in the ratio of 5 : 25 : 25 : 45. However, what is recommended is introduction to the extent of 33.1.3% at the level of Chargeman but there is no change or methodology suggested or laying down qualification for the posts of Assistant Foreman and Foreman. In this conspectus, part 'C' of Government of India's acceptance to recommendations of 5th CPC vide OM dated 30.9.1997, what has been laid down that whenever in certain cases of revision of pay scales, recommendations of CPC are subject to fulfillment of specific condition, including changes in the recruitment rules, it will be necessary for the Ministry to decide such issues and agreed to the changes suggested before applying these scales to the post w.e.f. 1.1.1996. However, what is implicit in the recommendations

of CPC is prospective effect of recommendations till then replacement scale would hold the field.

20. In the light of above, once the respondents have impliedly accepted the recommendations by adopting 4 grade structure in technical staff of AOC, recommendations of 5th CPC have been deliberated upon and accepted on 26.12.2001 by a letter issued expressly *inter alia* suggesting promulgation of recruitment rules and to put on redistribution the persons and to give effect of the benefit from the date of actual placement on restructuring. The aforesaid is a consequence of implementation of recommendations of 5th CPC where, except for recommending direct recruitment level at the stage of Chargeman, there is no specific recommendation as to the post of Foreman and recruitment rules to be introduced. However, from the chart, what we find that there is no change in the number of posts in the cadre, including Chargeman and Foreman, which remain the same but what has been done is upgradation and readjustment of posts. DOPT's OM of 1.2.1992 in a situation where upgradation involves, only a higher replacement scale without any additional responsibility or higher qualification, which is not forth coming from the recommendations of 5th CPC, the suitability of the incumbents shall not be assessed and they are to be placed in the higher scale from the date of effect of recommendations, i.e., 1.1.1996. DOPT's OM dated 25.5.1998, which talks of revision of pay scales and amendment of service rules, also reiterates the aforesaid.

21. In the light of above, when the duties and responsibilities of the applicant would not go any change and there is no recommendation and recruitment rules to be framed, the decision of the respondents in

their OM of 2001 to frame the recruitment rules to give effect to the recommendations on actual placement is oblivious of DOPT's OM of 4.1.1992. Applicant continued to perform the duties of Foreman right from 1998, accordingly the decision arrived at by the respondents on 27.4.2002 to re-designate the applicant as Chargeman Grade I is not apt in law.

22. Insofar as giving effect to the recommendations of 5th CPC is concerned, if there are no recruitment rules to be promulgated, as recommended by the 5th CPC, as per part 'C' of recommendations of 5th CPC, the benefit would be bestowed from the date of effect of the recommendations, i.e., 1.1.1996.

23. In the light of above, as we find that the decision taken by the respondents has not taken into consideration the DOPT's OM of 1992 and also the fact that there was no proposal for recruitment rules to be altered or reconstituted, this OA stands disposed of with a direction to the respondents to reconsider the entire issue of upgrading the applicant to the posts of Assistant Foreman and Foreman by a reasoned and speaking order to be passed within a period of three months from the date of receipt of a copy of this order. In the event, it is decided to accede to the request of the applicant, consequences shall ensue. No costs.

(Neena Ranjan)
Member (A)

(Shanker Raju)
Member (J)

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