

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.3389/2001

New Delhi this the 5th day of November, 2002.

HON'BLE MR. M.P. SINGH, MEMBER (ADMN)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Bhagwat Swaroop,
S/o late Tara Chand,
R/o Vill & Post: Daulatpur,
New Delhi-110043.

-Applicant

(By Advocate Shri A.K. Trivedi)

-Versus-

1. Union of India through
its Secretary,
Ministry of Defence,
South Block, New Delhi.
2. The Director General,
Defence Research & Development
Organisation, Headquarters,
New Delhi.
3. The Director,
Defence Research & Development
Organisation, Brig. S.K. Majumdar Marg,
Timarpur, Delhi-110054.
4. The Joint Director,
Defence Research & Development
Organisation,
Janshakti Ayojan & Development Directorate,
B Wing, Sena Bhawan, D.H.Q. Post Office,
New Delhi-110011.

(By Advocate Shri Surender Kumar)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 20.6.98 as well as 28.9.2001 whereby on re-structuring in the Defence Research Development Organisation cadre of Supervisor (Fire) and Civilian Assistant Fire Master has been restructured as Fire Supervisor as well as the request of the applicant for accord of pay scale of Rs.5000-8000 has been turned down. Applicant seeks quashment of these orders and direction to consider to extend the benefit of

Government of India's orders dated 3.2.2000 to accord the benefit of pay scale ibid with all consequential benefits.

2. Applicant has been working in DRDO and has risen to the rank of Civil Assistant Fire Master w.e.f. 3.12.97. On restructuring through an order dated 26.3.98 whereby Supervisor Fire and Civil Assistant Fire Master have been restructured and designated as Fire Supervisor in the pay scale of Rs.4000-6000 in the wake of the recommendations of the Fifth Central Pay Commission. Applicant preferred a representation to the respondents whereby the Grievance Review Committee observed that the matter has been decided in view of the recommendations of the Fifth Central Pay Commission and acknowledged that the matter has been advised to be taken up with DRDO.

3. Government of India, Ministry of Defence issued an order on 3.2.2000 wherein restructuring has taken place in the Fire Fighting Cadre in Army Ordnance Corps (AOC) wherein the cadre of Fireman has been re-designated as Fire Master and cadre of CFM to Fire Superintendent in the pay scale of Rs.5000-8000. Applicant due to non-redressal of his grievance preferred OA 1968/2001, wherein directions have been issued on 7.8.2001, directing the respondents to dispose of the representation of the applicant which has been accordingly disposed of by an order dated 28.9.2001, rejecting the request of the applicant, giving rise to the present OA.

4. Learned counsel for the applicant Sh. A.K. Trivedi, vehemently argued that the applicants have been meted out differential treatment which is discriminatory in

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violation of Articles 14 and 16 of the Constitution of India, as although the similar anomaly was cropped up in AOC, but Ministry of Defence granted the benefit of restructuring, upgrading the posts of CFM to Fire Superintendent in the pay scale of Rs.5000-8000. As the applicant in every respect is at par with the counter-parts of Fire Fighting Department in AOC in respect of discharge of duties, functional requirements, recruitment rules and other factors there cannot be a class within the class and as there exists an anomaly the same should have been corrected by the respondents as done in AOC.

5. Shri Trivedi further states that by an order dated 26.3.98 respondents have equated the feeder cadre and promotional cadre, i.e., Supervisor (Fire) and CAFM and placed them in one pay scale of Rs.4000-6000 and rejected the request of the applicant on flimsy grounds. Shri Trivedi states that it is within the jurisdiction of the Tribunal to interfere even in a case of parity of pay scale if there has been an anomaly and the action of the respondents is arbitrary, violative of Articles 14 and 16 of the Constitution of India.

6. On the other hand, respondents' counsel Shri Surender Kumar strongly rebutted the contentions and states that as per the recommendations of the Fifth Central Pay Commission's recommendations taking overall view, including stagnation/education profile and functional requirements the cadre restructuring of Fire Fighting Cadre was done in DRDO by Ministry of Defence letter dated 26.3.98. The erstwhile categories of CFM and Supervisor (Fire) in the pre-revised pay scale have been amalgamated into a common

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replacement scale of Rs.4000-6000. Earlier the erstwhile category of CFM was in the pay scale of Rs.1320-2040 and Supervisor (Fire) in Rs.1200-1800. While framing recruitment rules for the restructured grade it has been made clear in the SRO that redesignated post of Fire Supervisor, the Civilian Assistant Fire Masters would be placed enblock senior to the Supervisor (Fire).

7. As regards the extension of benefit of order passed on 3.2.2000 in a different organization, i.e., AOC there cannot be a parity due to different organization. Applicant cannot take benefit of the same. Moreover, it is contended that in view of the decision of the Apex Court in Union of India v. P.V. Hariharan, (1997) SCC (L&S) 838 it does not lie within the jurisdiction of this Tribunal to interfere in the matter of pay scale which has been left to be decided by the expert bodies like Pay Commissions.

8. Learned counsel further stated that both the posts of CFM and Supervisor (Fire) are Group 'C' non-gazetted posts and there is no question of supervision by CFM within the Group 'C' whereas the role of both the posts is coordinated. Moreover, it is contended that the recruitment rules for Fire Fighting Staff and DRDO in AOC are different with different hierarchical set up, whereas DRDO Fire Fighting staff is not under the administrative control of any Fire Advisor. In AOC the Fire Fighting Staff is headed by a fire Supdt. in the pay scale of Rs.5000-8000, but in DRDO, the Fire Fighting Staff is under the control of a Chief Fire Officer in the pay scale of Rs.7500-12000. Above the level of Rs.5000-8000, there are two higher grades in the pay scales of Rs.6500-10500 and

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Rs.7500-12000 in DRDO. The cadre structure of Fire Fighting staff in AOC and DRDO are all along different. As the Fire Fighting Staff in DRDO is in advantageous position as compared to AOC and the promotional avenues and functional need of an organisation which is of paramount importance there is no discrimination meted out to the applicants and the Government once accepted the recommendations of Fifth Central Pay Commission the follow up action is in accordance with the same.

9. It is contended that there is no anomaly in the pay scale of CFM and their pay scale has not been downgraded, as such there is no question of constituting an anomaly committee for different organization not at par. The concept of equal pay for equal work would not have any application in the present case.

10. In the rejoinder, applicant has re-iterated the pleas taken in the OA.

11. Before we proceed to resolve the controversy the Apex Court has laid down the following ratio in P.V. Hariharan's case (supra):

"The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is also being misunderstood and misapplied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will size due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification or interfering with the fixation of pay scales. We have come across orders passed by Single Members, and that too quite

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often Administrative Members, allowing such claims. These orders have a serious impact on the public exchequer too."

12. If one has regard to the aforesaid ratio, in order to claim application of doctrine of equal pay for equal work the Tribunal is precluded from interfering with the prescribed pay scales which have to be left to be done by the Expert Bodies having requisite experience in the field like Pay Commission. This can be interfered only when there has been a violation of Articles 14 and 16 when it is found that the two categories are at par in every respect, including recruitment rules, discharge of duties and responsibilities and other factors including functional requirements.

13. In the light of the aforesaid decision we have gone through the record and find that the decision of the respondents to re-structure the cadre and amalgamated the posts of DFM and Supervisor (Fire) and recommending the common replacement scale of pay of Rs.4000-6000 is done as recommended by the Fifth Central Pay Commission in para 55.121 of its recommendations.

14. The contention of the applicant is that in AOC despite recommendation as an anomaly was found the post of CFM was upgraded to the pay scale of Rs.5000-8000 but in the DRDO the same has not been done and despite anomaly the matter has not been referred to the Government for taking appropriate action. We have seen the recruitments rules as annexed by the applicant in DRDO but has not furnished to us the recruitment rules in AOC. Moreover, we find that the duties and functions for the post of Supervisor (Fire) and CFM in both the organisations are not identical as well

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as the DRDO Fire Fighting staff is also not under the administrative control of Advisor whereas in AOC it is headed by a Fire Superintendent and overall controlled by the Chief Fire Officer. We also find that the Chief Fire Officer's pay scale is Rs.7500-12000 and above the level of Rs.5000-8000 there are two higher grades in the pay scale of Rs.6500-10500 as well as Rs.7500-12000 in DRDO. Applicants are in advantageous position in DRDO as compared to AOC having more promotional avenues.

15. Moreover, each organisation has to restructure its cadre on the basis of its functional needs. We do not find any creation of class within the class and no anomaly or discrimination meted out to the applicants. Fire Fighting staff in AOC cannot be compared to that of in DRDO, both are not equal in respect of hierarchical set up, recruitment rules as well as functional requirements.

16. We find that the claim of the applicants that the feeder cadre and the promotional cadre as well have been merged and applicants who have been worked as CFM Supervisor the work of Supervisor (Fire) are merged, cannot be countenanced as both as both the posts are in Group 'C' and are working on coordination.

17. Applicant cannot be promoted to Rs.5000-8000 by-passing the intermediary pay scale of Rs.4500-7000. Restructuring in AOC is independent of their own functional requirement and this cannot be compared with DRDO. We find that once a conscious decision has been taken by the Government to accept the recommendations of the Fifth Central Pay Commission, in absence of any arbitrariness or

violation of Articles 14 and 16 of the Constitution of India and the fact that the applicant stands on a different footing and is not similarly circumstance with the counter-parts in AOC, we cannot interfere in the matter of pay scale in view of the decision of the Apex Court in Hariharan's case (supra).

18. In the result, we find that the claim of the applicant is bereft of merit. The OA, therefore, fails and is dismissed. No costs.

S. Raju

(Shanker Raju)
Member (J)

M.P. Singh

(M.P. Singh)
Member (A)

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