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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.3448/2001

New Delhi this the 8th day of November, 2002.

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

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. Naval Hydrographic Office  
Worker Union, 107-A, Rajpur Road,  
Dehradun, represented through  
Shri Jagdish Chandra Kukreti,  
President of the Union.

2. R.K. Talwar D'Man Gd-II,  
S/o Sh. V.N. Talwar,  
90-Kaulagarh,  
Dehradun.

3. Shri Harbans Lal,  
S/o Shri Amar Singh,  
Village & Post Office Tunwala,  
Dehradun.

-Applicants

(By Advocate Shri K.B.S. Rajan)

-Versus-

1. The Union of India through  
the Secretary,  
Ministry of Defence,  
South Block,  
New Delhi-110 0011.

2. The Chief Hydrographer  
to the Govt. of India,  
Directorate of Hydrography,  
Room No.50, A Block Hutments,  
Dalhousie Road,  
New Delhi-110011.

3. The Jt. Controller of Defence Accounts (Navy),  
No.1, Cooperage Road,  
Mumbai-39.

4. The Secretary,  
Ministry of Finance,  
(Dept. of Expenditure),  
North Block,  
New Delhi.

-Respondents

(By Advocate Shri A.K. Bhardwaj)

O R D E R

By Mr. Shanker Raju, Member (J):

By this OA applicants have impugned respondents' letter dated 7.12.2001, whereby the benefit of revised pay scales for Draftsmen of Naval Hydrographic Office (NHO) extended vide letter dated 25.11.95 have been withdrawn.

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They have sought quashment of the same by declaring para 6 of letter dated 15.9.95 as ultra vires and accord of pay scale as per OM dated 19.10.94.

2. Draftsmen in CPWD have been in three different designation, viz., Grade-III, II and I. Their pay scales have been revised by way of arbitration award w.e.f. 1.11.83. Draftsman Grade Rs.260-400 was revised to Rs.330-560, Grade II Rs.330-560 to Rs.425-700 and Grade I from Rs.425-700 to Rs.550-750 with the condition that qualification in respect of corresponding post should be similar.

3. By a notification dated 19.10.94 sanction of the President has been accorded to revise the pay scale of Draftsmen in other Central Ministries at par with their counter-parts in CPWD, despite non-matching of qualification but on fulfilment of specified number of years of service. Accordingly, Ministry of Defence extended the provisions of OM to various Department by a letter dated 15.9.95 but in para 6 it is stipulated that the order would not apply in respect of cadres of Draftsmen where Draftsman Grade III is the first entry grade by direct recruitment with further promotion to Draftsman Grade II to Rs.1400-2300 and grade I to Rs.1600-2660.

4. Naval Headquarters by an order dated 16.10.95 extended the provisions of OM dated 15.9.95 to its wings, including NHO.

5. Accordingly, the pay scale of Draftsmen has been revised to Rs.425-700.

16

6. The Audit authorities by referring to para 6 of OM dated 16.9.95 informed the respondents that the Draftsmen of NHO are not entitled to the benefit of revised pay scale as majority of them have entered the service in the pay scale of Rs.330-560.

7. Being aggrieved by this order applicants filed OA-2303/2001 and by an order dated 20.9.2001 respondents have been directed to consult the Ministry of Finance and to take a decision within four months and after that the interim order dated 6.9.2001 will continue for a period of one month.

8. By the impugned order dated 7.12.2001 request of the applicants was rejected on the ground that the pay scales and grade structure of Draftsmen in the CPWD and in NHO were different and whatever had been given as upward revision to CPWD has already been made applicable to the Draftsmen of NHO.

9. By an order dated 22.2.2002 recovery from the pay of the applicants has been stayed.

10. Learned counsel for the applicants Sh. K.B.S. Rajan stated that the only reason given for denial of higher pay scale to the Draftsmen in NHO is that before the award of arbitration the pay scales of Draftsmen in NHO were different from the pay scales of the Draftsmen in the CPWD and the grade structure was different from CPWD and the Draftsmen in NHO were getting higher pay scale before the award.

17  
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11. According to Sh. Rajan in CPWD three grade structure exists in the Draftsmen cadre, i.e., Grade-III, II and I whereas in the Central Ministry Grade of Draftsmen Grade III was called Tracer. These grades were in the hierarchy of Rs.260-430, Rs.330-560 and Rs.425-7000 which were increased to Rs.330-560, 425-700 and 550-750 respectively. As per order dated 13.3.84 the pay scale of three grade structure of Draftsmen in Central Ministries are to be revised, whereas in view of the decision of the Tribunal in OA-458/86 where the pay scales were similar the qualifications being not equal higher pay scales were made admissible to the DGS&D at par with the Draftsmen of CPWD. In their noting dated 19.10.2001 respondents have clearly mentioned that Draftsmen and Senior Draftsmen of NHO were at par with the Grade II and Grade I of CPWD right from the First Pay Commission onwards.

12. Sh. Rajan contends that existence of two grade structure cannot be a valid ground for denying the benefit as in the office of DGDE, another wing of Ministry of Defence where only two grades exist the lower having the pay scale of Rs.330-560 the revision of Rs.425-700 could not have been accorded but yet the higher pay scales have been accorded to both the grades which belies the justification of the respondents to reject their request of higher pay scale.

13. By referring to the decision of the Principal Bench in OA-49/2001, A.K. Sethi v. Union of India, decided on 14.3.2002 dealing with the case of Senior Planning Draftsmen in TCPO, it is contended that the court

18

ruled that revision of pay scale could not be denied because of non-existence of three grade structure. Sh. Rajan in this conspectus contended that order dated 19.10.94 whereby the requirement of comparable qualifications qua Draftsmen of CPWD has been done away stipulating specified period of experience in the respective grade qualifications cannot be compared and moreover applicants are comparable to Draftsmen Grade II of CPWD, as such the higher revision from Rs.330-560 to Rs.425-700 should have been granted to them as done in the case of Draftsmen Grade II of CPWD. He further states that the aforesaid discrimination is arbitrary, malafide and is anti thesis to Articles 14 and 16 of the Constitution of India and offends the ratio laid down in Union of India v. Debashishkar, JT 1995 (5) 543.

14. On the other hand, Sh. A.K. Bhardwaj, learned counsel appearing for the respondents strongly rebutted the contentions of the applicant and objected to the maintainability of the OA on the ground of non-exhaustation of remedy and further stated through their speaking order dated 7.12.2000 to ensure that extension should not result in double benefit where the pay structure is already on higher side. Para 6 in the order dated 15.9.95 clearly stipulates that the same should not apply to the Draftsmen where Grade III (Rs.1200-2040) is the first and the grade by Direct recruitment with further promotion to Draftsman Grade II and Grade I (Rs.1400-2300 and Rs.1600-2660) respectively. As the Draftsmen in NHO were not in the pay structure of Rs.330-560, Rs.425-700 and Rs.550-750 but in the pay structure of Rs.330-560, Rs.425-700 and Rs.550-750 the scale which CPWD Draftsmen

19

got consequent upon implementation of the award with first entry grade as Rs.330-560 the same is not admissible to the respondents and the same have been erroneously applied to the applicants the same being an administrative error can be rectified at any stage.

15. It is further stated that the applicants have filed CWP-5817/2001 before the High Court of Delhi with the same request.

16. We have carefully considered the rival contentions of the parties and perused the material on record. It is not disputed that three grade structure is prevalent in CPWD where grade III entry grade Draftsmen is Rs.260-430 which was revised to Rs.330-560 by the Arbitration Award and in NHO the initial grade for Draftsmen is Rs.330-560 which is the upward revised scale of CPWD Draftsmen. By a Presidential Order dated 10.10.94 revision of pay scale was resorted to in CPWD irrespective of the recruitment qualification and by an order dated 15.9.95 the same was made applicable to Draftsmen of all Government offices at par with that of CPWD on the basis of award but with a stipulation that the same would not apply to the cadres of Draftsmen where the entry grade is Rs.1200-2040, i.e., pre-revised Rs.330-560.

17. Respondents implemented Ministry of Defence letter dated 15.9.95, to the applicants but on an Audit Objection as majority of Draftsmen of NHO who have entered in service in the scale of Rs.330-560 and in view of clause 6 ibid they were not found entitled for upward revision of

pay scale as this would amount to double benefit extended to them took a decision to take away the benefit with consequent recovery.

18. Respondents while disposing of the representations, as directed by the Tribunal denied them the benefit basically on the ground that as the grade structure as well as the pay scales of Draftsmen in CPWD and NHO were different and as whatever has been accorded by way of revision in pursuance of an award to other organisation of the Government respondents have already been accorded the same.

19. Calcutta Bench of the Tribunal in OA No.458/96 in Sunil Kumar Bhowmick & Ors. v. Union of India & Ors. decided on 3.7.87 made the following observations:

"Therefore, from whatever angle be may look into this matter we are inclined to hold that the benefit of revised pay-scales which has been made available to the Draftsman, Grade-I, Draftsman, Grade II and Draftsman, Grade III of C.P.W.D. should also be made available to the Tracer/Junior Draftsman/Senior Draftsman of D.G.S.D., taking into consideration the parity of pay-scales which were so long being enjoyed by these two groups. The Award of Mr. Puri, which we have referred to above, has not, by implication-directly or indirectly taken away the right of the applicants to be treated at the par with their counterparts in the C.P.W.D.

In view of what we have discussed above, the application succeeds. The applicants, who are either Tracer or Junior Draftsman or Senior Draftsman in the Director General of supply & Disposal will get the same pay scale with their counterparts, i.e., Draftsman Grade III, II and I in the C.P.W.D. with effect from 13.5.1982 i.e. when the award came into force."

20. The Principal Bench of this Tribunal in Sethi's case (supra) also made the following observations:

22

"8. We have also carefully examined the observations made by the Tribunal in its order dated 8.2.2000. In the observations reproduced in para 3 above, it is clearly mentioned that the applicants' claim cannot be rejected merely because of the non-existence of the three grade system in the organisation. In our judgment, this would imply that the applicants' claim could certainly be examined and rejected if valid grounds are available to the respondents. The grounds which were placed before the Tribunal in the aforesaid contempt petition and later repeated in the impugned order dated 24.8.2000 (Annexure A-2) are precisely the grounds which have nothing to do with the ground of non-existence of the three grades of Draftsmen. These are independent and valid grounds and could always be kept in view at the time of considering the applicants' claim."

21. The Apex Court in Union of India & Anr. v. P.V. Hariharan and Anr., 1997 SCC (L&S) 838 has made the following observations:

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

22. 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. There cannot be a discrimination in the matter of upward revision of pay scale if other conditions are fulfilled.

23. However, we note that the Draftsmen at the entry grade i.e., Rs.330-560 in NHQ were holding the same pay scale as revised upwardly on the basis of the award in CPWD. By according them the benefit of the CPWD award despite the pay structure is already on the higher side and to ensure that this does not result in extension of double benefit, para 6, as stipulated in the order dated 15.9.95, ensured that the benefit would not apply to Draftsmen in the Department where Draftsmen Grade III (Rs.1200-2040) is the first grade as direct recruitment. As we find that whereas in CPWD and other organisation of Government pay structure in the Draftsmen Cadre was Rs.260-400, Rs.330-560 and Rs.500-700/550-750 the pay scale is not admissible to them as they were already enjoying the higher pay scale which were made available to the Draftsmen of CPWD after the award.

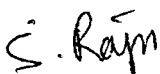
24. Moreover, we find that on an audit objection with regard to the first entry grade of Rs.330-560 and as per clause 6 of order dated 15.9.95 it was found that the applicants have been erroneously accorded the benefit which was not available to them at par with Draftsmen of CPWD orders have been erroneously applied to the Draftsmen of NHQ. As the applicants were not entitled for it the same has been withdrawn which has been accorded to them on the basis of an administrative order which does not suffer from any legal infirmity. We have also perused the order passed

(24)

on representations and find that the reasons assigned to them away the benefit erroneously accorded to Draftsmen of NHQ was based on reasonable and relevant grounds and as the applicants are not equal in all respects with Draftsmen of CPWD by not according them the benefit which they had already been enjoying would not result in hostile discrimination, violative of Articles 14 and 16 of the Constitution of India.

25. In pursuance of the direction of the court the matter was re-examined in consultation with the Ministry of Finance and it was arrived at that the Draftsmen in NHQ are not entitled for the revised pay scale as given to their counter-parts in CPWD. The decision in Kar's case (supra) as well as decision of the Calcutta Bench would not apply to the facts and circumstances of the present case in the light of para 6 contained in the letter dated 15.9.95, where on the basis that the entry grade of direct recruitment in Draftsman Grade III is in the pay scale of Rs.1200-2040 and the applicants cannot be accorded double benefits as they are already enjoying the revised pay scale much earlier to the award. We do not find any hostile discrimination meted out to the applicants as they are not at par with the Draftsmen of CPWD and the decision of the Government even on reconsideration does not suffer from any legal infirmity being fortified on reasonable and relevant grounds.

26. In the result and having regard to the reasons recorded above, we do not find any merit in the present OA, which is accordingly dismissed. The interim order passed on 22.2.2002 is hereby vacated. No costs.

  
(Shanker Raju)  
Member (J)

  
(M.P. Singh)  
Member(A)

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