

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1693/99

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New Delhi this the 05th day of December, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman
Hon'ble Mr. Govindan S. Tampi, Member (Admnv)

Narender Singh

....Applicant

(By Advocate Mrs. Avnish Ahlawat)

-Versus-

Union of India & Others

....Respondents

(By Advocates Shri S.M. Arif)

1. To be referred to the Reporter or not? YES/NO

2. To be circulated to other Benches of
the Tribunal?

YES/NO

(Govindan S. Tampi)
Member(A)

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PRINCIPAL BENCH

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New Delhi, this the 05.12.2000

Hon'ble Shri Justice V Rajagopala Reddy, VC(J)
Hon'ble Shri Govindan S Tampi, Member (A)

Narendar Singh, S/O Late Ch. Sardar Singh
R/o 1st Floor, North East, 1157,
Kucha Mahajani, Chandani Chowk, Delhi
.....Applicant
(By Advocate Mrs. Avnish Ahlawat)

Vs

1. Union of India through
Secretary to the Govt of India,
Ministry of Defence,
South Block, New Delhi
2. The Scientific Advisor,
to the Min. of Defence and
Secretary, Defence Research and
Development Organisation,
South Block, New Delhi
3. The Director,
Institute of Nuclear Medicine and
Allied Sciences,
Lucknow Road, Delhi

.....Respondent
(By Advocate Shri S M Arif)

O R D E R (ORAL)

Mr. Govindan S. Tampi, Member (A)

Shri Narendar Singh, the applicant challenges the order dated 5.4.99, from INMAS, DRDO Ministry of Defence rejecting his representation for stepping up of his pay vis-a-vis, his junior Shri Sudershan Lal.

2. The applicant who has retired on 31.8.95, was initially appointed as on 10.11.1961 as Machinist in Defence Science Laboratory, in Defence Research and Development Organisation (DRDO), on being sponsored by the Employment Exchange. He became an Instruments Mechanic on 25.3.1966. The above promotion followed of the decision of the Hon'ble Delhi High Court on 16.11.79. TA No. 890/85 filed by him was decided on

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911.89, with directions to grant him arrears of pay and allowances from 26.3.1966 to 15.7.1973. Though his case was directed to be considered for the post of Chargeman Grade II, it did not take place till he came to the Tribunal and got a decision in his favour. He became a Technical Supervisor Grade-II wef 14.6.1973, from the date when his juniors Kewal Krishan and N K Arora were promoted; was re-designated as Chargeman Grade-II and was promoted as Chargeman Grade-I, w.e.f. 15.3.1993. His pay was accordingly fixed on 22.6.1994. Though he was entitled to fixation of pay at Rs.425-700/- w.e.f. 1.1.73 it was done only at Rs. 380-560/- . Following the decision of the Bangalore Bench of Administrative Tribunal, all Chargemen Grade II as on 12.9.1981 were enbloc placed above Precision Mechanics. Following this a review DPC was held on 21.3.1996, to review the promotions made between 12.9.81 and 28.1.92 to the grades of chargeman Grade-I, Asstt. Foreman and Foreman and the resultant orders were issued on 12.8.96. As per this order the applicants' promotion as Chargeman Grade I was advanced to 15.9.91 and he was placed at Sl No. 13 above Shri Sudarshan Lal at Sl No. 16 who was also promoted from 15.9.91, from the post of Precision Mechanic. Sudarshan Lal, who was originally appointed as Radio Mechanic in INMAS on 1.4.67, became a Precision Mechanic on 3.4.68, Chargeman Grade I on 17.3.87 and Asstt. Foreman on 15.3.93, but his promotion as Chargeman Grade I was brought down to 15.9.91 subsequently . Since Sudarshan Lal had become junior to the applicant, he was entitled to be promoted to the post of Asstt. Foreman w.e.f.

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15.3.93, more so as he has been agitating against Sudarshan Lal's higher placing from the beginning. The applicants' representation in this regard was replied on 17.9.97, indicating that Sudarshan Lal, as Precision Mechanic was drawing the pay in the scale of Rs.425-700/- w.e.f. 1.1.73, while the applicant, on 1.1.73 was drawing pay as Instrument Mechanic in the scale of Rs. 380-560/- and got the scale of Rs. 425-700/- w.e.f. 14.6.73, on his promotion as Supervisor Grade-II. Thus though the applicant was entitled to higher pay and earlier promotion the respondents, on the plea that he and Sudarshan Lal came from different streams, protected his pay and permitted him to enjoy the benefit to the cost of the applicant. The respondents have ignored the fact that while Sudarshan Lal had originally joined as a Radio Mechanic w.e.f. 1.4.67 in the scale of Rs. 150-240/- and became a Precision Mechanic in the scale of Rs. 205-280/- w.e.f. 5.4.68, the applicant had joined as a Machinist on 10.11.61 in the scale of Rs. 110-155/- revised to Rs. 260-400/-. he became Instrument Mechanic in the scale of Rs.150-240/- on 25.3.66, which was revised to Rs. 380-560/- w.e.f. 1.1.73. As Radio Mechanic and Instrument Mechanic were at par, Sudarshan Lal had been always junior to him in the equivalent posts. Still he was given the benefit vis-a-vis the applicant and was given the promotion even as Asstt. Foreman, though he was subsequently reverted. This fact was brought to the applicant to the notice of the respondents on 11.8.97 requesting

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them to grant his promotion as Asstt. Foreman w.e.f. 15.3.93 which was rejected by them on 5.4.99 without assigning any reason. Hence this application

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3. Grounds raised by the applicant are as follows:

i) As review DPC had placed him as Chargeman Grade-I w.e.f. 15.9.91, ahead of Sudarshan Lal he was entitled for promotion as Asstt. Foreman w.e.f. 15.3.93.

ii) As his junior was promoted and given pay protection he was also entitled for the same under FR 22(c)

iii) In view of the review DPCs' findings, placing him above Sudarshan Lal, his pay also should have been placed along with that of the junior.

iv) Sudarshan Lal was originally appointed not as Precision Mechanic in 1968, but was as Radio Mechanic in April 1967.

v) Sudarshan Lal's promotion as Asstt. Foreman having been forfeited it should have gone to the applicant.

vi) Non stepping up of the pay of the applicant vis-a-vis Sudarshan Lal was improper.

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vii) applicant's pay deserved to be fixed in the grade of Asstt. Foreman w.e.f. 15.3.93.

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viii) Protection of pay granted to Sudarshan Lal should have been rightly extended to the applicant as if he was promoted as Asst. Foreman.

In view of the above, the applicant seeks

- a) promotion as Asstt. Foreman w.e.f. 15.9.1993;
- b) grant under FR 22(c) to him of the benefit of pay scale given to Sudarshan Lal.
- c) grant of pensionary benefit accordingly as well as
- d) Costs for the application.

4. Respondents vehemently dispute the claims made by the applicant. The preliminary objection raised by them is on limitation. According to them, the applicant if at all, was aggrieved should have come before the Tribunal when the promotion orders were issued on 18.7.96, which he has not done.

On merits the following points are urged by the respondents.

- i) Question of stepping pay of the applicant vis-a-vis Sudarshan Lal does not arise, as he was drawing pay more than the applicant and he became junior only on account

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of the review DPC in 1996. Sudarshan Lal was appointed as Precision Mechanic while the applicant was promoted as Technical Supervisor, redesignated as Chargeman Grade II. Moreover he was drawing less pay than Sudarshan Lal till latter's reversion.

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ii) OA is hit by limitation not having been filed within one year from 18.7.96 when the promotion took place.

iii) Applicant was Technical Supervisor II and the post was re-designated as Chargeman II w.e.f. 1.3.77 which was an earlier promotion post.

iv) Respoindents did not intentionally delay the implementation of the Tribunal's Order dated 18.3.93, but administrative requirements came on way and therefore the contempt petition was dismissed.

v) As the applicant became Technical Supervisor Grade II, only on 14.6.73, he was eligible to get the scale of Rs. 425-700/- only from that day and not on 1.1.73, in view of Govt's clarification dated 11.4.94.

vi) Though both the applicant and Sudarshan Lal were promoted as chargeman w.e.f. 15.3.93 former's being antedated from 15.3.93 and the latter's being post dated from 17.3.87

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they had come from different streams. While the applicant has joined as Machinist in 1961 and through promotion became Chargeman Grade II in 1.3.77 Sudarshan Lal was appointed as Precision Mechanic in 1968. As they came from different streams, comparison of their relative seniority before promotion was irrelevant. In fact in the review DPC of 1996, neither the applicant nor Sudarshan Lal were placed on the Select Panel, and R S Yadav, who was senior to both was made Asstt. foreman in the vacancy caused by the reversion of Sudarshan Lal.

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vii) The applicant has been duly advised that his claim for stepping up of pay under FR 22(C) vis-a-vis Sudarshan Lal was not possible as the latter was correctly drawing higher pay, though by review DPC he became junior to the applicant. Further Sudarshan Lal's pay was correctly protected treating it as his personal pay as he was working as Asstt. Foreman till his reversion. Moreover, Sudarshan Lal at no time drew salary less than the applicant.

viii) Sudarshan Lal was appointed as Precision Mechanic w.e.f. 3.4.68 and not promoted from Radio Mrechanic while the applicant came up from the rank of Machinist and Instrument Mechanic and became Technical Supervisor w.e.f. 14.6.73, former drew salary in the scale of Rs. 425-700/- w.e.f. 1.1.73

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and the applicant from 14.6.73. Therefore even before 15.9.91, he was drawing higher pay than the applicant.

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ix) Neither the applicant nor Sudarshan Lal were eligible for promotion as Asst Foreman till 15.3.94. Therefore following the review DPC, Sh. R S Yadav, Senior to them as Chargeman Grade-I was promoted as Asstt. Foreman w.e.f. 15.9.93.

x) Sudarshan Lal's pay was protected following his reversion whereas in the case of the applicant there was no lowering of pay. In fact his promotion has been antedated. Pay protection was given to Sudarshan Lal as he was retiring on 31.12.96, but the applicant cannot get the benefit as he had not worked as Asstt. Foreman.

xi) Sudarshan Lal's posting as Precision Mechanic was an appointment and not promotion.

xii) Stepping up of pay for the applicant is not permissible, as he was never senior to Sudarshan Lal except as Chargeman Grade I w.e.f. 15.9.91, by the review DPC.

xiii) Pay protection was granted to Sudarshan Lal keeping in mind, his having worked as Asstt. Foreman during September 91 to

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March 96 as personal to him to be absorbed in future increments. Applicant cannot complain against it.

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xiv) No injustice has been caused to the applicant and he cannot therefore have any legitimate grievance.

5. In the rejoinder the applicant points out that Sudarshan Lal got the higher pay on account of his wrongly granted earlier promotion. The benefit of which was extended to him even after promotion. Applicant was therefore correctly entitled to get the benefit of pay fixation vis-a-vis his junior Sudarshan Lal. Further R S Yadav was even earlier holding the post of Asstt Foreman and he was not adjusted in the vacancy caused by Sudarshan Lal's reversion. It is the wrong fixation of pay for Sudarshan Lal, which has given him the benefit as if he has been promoted as Chargeman I in 1987, which has been nullified, without taking away the pay protection. This has denied the applicant his due and hence his application for the reliefs.

6. Heard the counsel for the applicant and the respondents. Smt. Avnish Ahlawat appeared for the applicant & Sh. S. Mohd Arif for the respondents.

7. Very strongly reiterating the points urged by the applicant Smt. Avnish Ahlawat the learned counsel states that what has been denied to him all these days and through a series of litigations should be granted to him atleast now. His plea is that at least he should be given

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the pensionary benefits accruing on account of the higher emoluments, which he was also entitled but given to someone admittedly junior and permitted to be taken by him on his retirement as well. All the arguments raised by the respondents as to Sudarshan Lal having never been junior to the applicant and always having drawn higher pay were irrelevant, as he was given the benefits which rightly belonged to the applicant. The averment that R S Yadav, who was still senior to both Sudarshan Lal and the applicant was promoted in the vacancy caused by the reversion of Sludarshan was fallacious, as he was given a different post. In view of the above, the applicant should succeed, is her plea.

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8. Shri S Mohd Arif learned counsel for the respondents, on the other hand argues that no injustice has been done to the applicant and he cannot therefore have any legitimate grievance against the department's action. According to him Sudarshan Lal, having been senior earlier was given his due which was neither at the cost or detriment of the applicant. He should be happy that his seniority as chargeman I has been antedated from 1993 to 1991 with benefits following therefrom and he cannot ask for more on imaginary grounds, which he has raised. The application therefore, has to fail, urges Sh. Arif.

9. We have carefully deliberated upon the contentions raised by both parties in their pleadings as well as during the hearings. This is the case of a Govt. servant who has fought the mighty force of the organisation throughout his career and is still doing it four years after his retirement on superannuation. Every promotion

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he got he had to fight for in the courts of law. Needless proceedings initiated against him had to be quashed by the court and the Tribunal and now he is at our portals for getting his pensionary benefits. While the organisation appears to take him to be a habitual litigant, the fact is that he has been forced to approach the doors of justice for redressal of his genuine grievance.

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10. The Preliminary objection raised by the learned counsel for the respondent on limitation has no basis. This is a case of fixation of pay which is a continuous cause of action, which is squarely covered by the decision of the Hon'ble Apex Court in Sh. M R Gupta's case. (Further his representation for fixation of parity of pay with that of his junior Sudarshan Lal, who was given special dispensation by the Deptt, was rejected finally on 5.4.99, following which he has come to this limitation.) The OA cannot be dismissed at the threshold on the grounds of limitation. The applicant, is however, not entitled for arrears.

11. The pleas made by the applicant are two fold i.e. promotion to the grade of Asstt. Foreman from 15.3.93 and stepping up of his pay with that of his junior Sudarshan Lal. His plea is that as Sudarshan Lal has been correctly brought down in seniority below him w.e.f. 15.9.91 as Chargeman-I and has also been reverted from the post of Asstt. foreman w.e.f. 15.3.93, he should have got the same post as of right. This would have been acceptable if on 15.3.93, had he been eligible for being considered for promotion on that date. However, as on the relevant date he had not completed the period of regular

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service as Chargeman-I, which alone would have made him eligible for consideration for promotion as Asstt. Foreman, the applicant's plea cannot succeed. Requirement of minimum qualifying service cannot be relaxed for individual cases. And nobody junior to the applicant has been promoted as Asstt. Foreman. It is also seen that no additional vacancy in the grade of Asstt. Foreman has arisen in INMAS, till 31.8.95, when the applicant has retired on superannuation. His plea for promotion as Asstt. Foreman therefore has to fail.

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12. Respondents have pointed out that the applicants plea for promotion as Asstt. Foreman in the place vacated by the reversion of Sudarshan Lal cannot be accepted as it was already filled up by R S Yadav. Nothing turns on it as Yadav was promoted earlier to Sudarshan Lal and the latter's reversion has nothing to do with Yadav's promotion. This however, is immaterial as the denial of applicant's promotion is relatable to his not completing the eligibility period on 15.3.93.

13. The position however, is different with regard to the applicant's plea for having his pay stepped up to that was given to Sudarshan Lal. It is a matter of record that the applicant is senior to Sudarshan Lal has been correctly decided by the review DPC. Therefore, his plea considerable force. Much has been made out in the averment by the Respondent that Sudarshan Lal has not been drawing lesser pay than the applicant earlier or that he was drawing higher pay than the applicant much before 1991 and therefore, stepping up of the applicant's pay with that of Sudarshan Lal in terms of old FR 22(c) was not

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permissible. It is also indicated that both the applicant and Sudarshan Lal having come from different streams, their related seniority if any in the previous cadre was not relevant. These arguments do not jell. The applicant who joined in 1961 as Machinist came up through promotions as Instrument Mechanic, Technical Supervisor Grade-II and finally as Chargeman Grade I w.e.f. 15.3.93. On the other hand Sudarshan Lal had joined as Radio Mechanic in 1967 and was promoted year later as Precision Mechanic before getting promotion as Chargeman Grade I and even Assistant Foreman though wrongly. It is only on account of the decision of the Administrative Tribunal at Bangalore which placed all precision Mechanics en bloc Precision Mechanic below Chargeman Gr.II, the applicant's promotions as Chargeman Gr. I was advanced to 1991 and the Sudarshan Lal's promotion given originally in 1987 was postponed in 1991 and he was placed below the applicant. In between on account of the wrong promotion granted to him earlier Sudarshan Lal could get the benefit of higher status and pay. The pay he drew as Chargeman I and Asstt. Foreman, was protected as personal to him inspite of his reversion to the grade of chareman I and the postponement of his promotion to Chargeman I to September 1991 from March 1987. This protection was accorded in pursuance of the letter of the Ministry of Defence, Department of Defence Research and Development No. 16490/RD/PERS-I/36/SD(R&D) dated 18.11.96. Thus in spite of his reversion the befit accrued to him on account of the wrong and fortuitous promotion was not taken off and he was given the privilege of continuing with the same though as a matter of personnel pay. In fact he was also given the benefit of replacement pay in that manner from 1.1.96. This was on account of his having held

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higher responsibilities. On the other hand, the applicant

applicant

who was admittedly senior to Sudarshan Lal, in spite of getting his placement, and seniority above the applicant continued to draw lesser pay and was made to superannuate on 31.8.95 without the benefit of the higher pay. That during the interrogation Sudarshan Lal, the junior was holding the higher post and hence the higher pay, would not justify not extending the benefit of higher pay to the applicant. He was made to hold a lower post and draw lower salary not on his volition but he was prevented from doing so till his seniority was refixed. He would therefore be entitled to get the benefit of the higher pay, which Sudarshan Lal his junior got. The benefit of the Hon'ble apex courts decision KV Janakiraman's decision would come to the applicants help. The fact that neither the applicant nor Sudarshan Lal could not be made Asstt. Foreman in 1993, would not alter the situation as what is being prayed for by the applicant is the grant of monetary benefits which had been given to his junior. There is no way it could be denied either in law or equity.

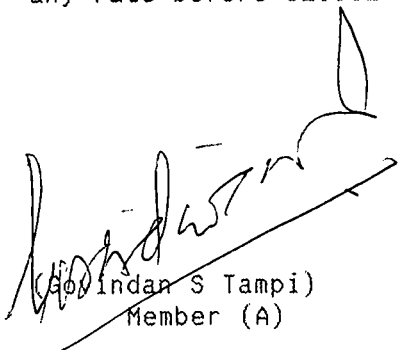
14. We have also perused perused the comparative chart of pay of both Sudarshan Lal and the applicant. It would appear that the same has been drawn up only to buttress the case of Sudarshan Lal and to justify the protection of pay granted to him till his date of retirement in 1996. Even the replacement scale following the adoption of the recommendation of the 5th Pay Commission has been worked out in that pattern. Thus he has also been permitted to draw the pensionary benefit as Asstt. Foreman though he had ceased to be one long

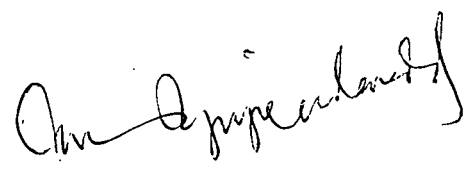
(15)

earlier, on the findings of the review DPC. It is all the more reason that the applicant also is given the benefit of fixation of pay as has been granted to Sudarshan Lal.

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15. In the above view of the matter, the application partially succeeds and is accordingly disposed of. The applicants' plea for promotion as Asstt. foreman from 15.3.1993 cannot be granted as he had not completed the requisite period of qualifying service as chargeman I on that date having been promoted only on 15.9.91 and no vacancy appears to have arisen in that grade till his date of Superannuation on 31.8.95. He would however get the benefit of fixation of pay, equal to what was drawn by his junior Sudarshan Lal with effect from 15.3.91 on his promotion as Asstt. Foreman, though wrongly granted but the benefit of which was permitted to be retained by him, despite the reversion as chargeman I and placement below the applicant in terms of Ministry of Defence, Deptt. of Defence Research and Department letter No. 16490/RD/Pers-I/336/5/D (R&D) of 18.11.1996, with full consequential benefits including pensionary benefits. Respondents are also being ordered to pay to the applicant, cost quantified at Rs.5000/- . This they should do within four months from the receipt of the copy of this order or any rate before 31.3.2001.


G. Indan S. Tampi)
Member (A)


(V. Rajagopala Reddy)
VC(J)

Patwari /