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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. No. 1274/97 with DA 985/97

T.A.No.

Date of decision 19-8-98

Sh. S.C. Sharma (DA 1274/97) ... Petitioner

Sh. R.L. Sachdeva & Ors

Shri S.K. Gupta

**... Advocate for the
Petitioner(s)**

VERSUS

UDI & Ors

... Respondents

Shri R.F. Aggarwal

... Advocate for the Respondents

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The Hon'ble Shri S.R. Adige, Vice Chairman (A)

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

**1. To be referred to the Reporter or
not?.**

Yes

**2. Whether it needs to be circulated to
other Benches of the Tribunal?**

No.

Lakshmi Swaminathan

**(Smt. Lakshmi Swaminathan)
Member (J)**

Central Administrative Tribunal
Principal Bench

(12)

O.A. 1274/97
and
O.A. 985/97

New Delhi this the 19th day of August, 1998

Hon'ble Shri S.R. Adige, Vice Chairman (A).
Hon'ble Smt. Lakshmi Swaminathan, Member (J).

O.A. 1274/97

S.C. Sharma,
S/o Shri R.D. Sharma,
R/o H.No. 2533, Basti
Punjabian, Subzi Mandi,
Delhi-110 007.

... Applicant.

By Advocate Shri S.K. Gupta.

Versus

1. Union of India, through
Secretary,
Ministry of Defence,
South Block, New Delhi.
2. Director General-cum-Secretary,
Defence Research Development Organisation,
Ministry of Defence, 'B' Wing,
Sena Bhawan, New Delhi-110 011.
3. Deputy Controller of Defence Accounts,
(Research and Development),
Metcalfe House, Old Secretariat,
Delhi-110 054. ... Respondents.

By Advocate Shri R.P. Aggarwal.

O.A. 985/97

1. R.L. Sachdeva,
S/o Shri (Late) Sardari Lal
Sachdeva,
R/o 282, Dr. Mukerjee Nagar,
Delhi-110 009.
2. Devender Kumar,
S/o late Shri Babu Lal Mudgal,
R/o 1/9218, Street No. 6,
West Rohtas Nagar,
Shahdara, Delhi-32.
3. Sarojini Gurnani,
D/o Sh. V.J. Nagrani,
R/o 23/31, Old Rajender Nagar,
New Delhi-110 012.
4. Santosh Chopra,
D/o K.L. Vohra,
R/o F-222, Moti Bagh,
New Delhi.

By Advocate Shri S.K. Gupta.

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Versus

1. Union of India, through
Secretary,
Ministry of Defence,
South Block, New Delhi.
2. Director General-cum-Secretary,
Defence Research Development Organisation,
Ministry of Defence, 'B' Wing,
Sena Bhawan, New Delhi-110 011.
3. Deputy Controller of Defence Accounts,
(Research and Development),
Metcalfe House, Old Secretariat,
Delhi-110 054. ... Respondents.

By Advocate Shri R.P. Aggarwal.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member (J).

The learned counsel for the parties have submitted that the facts and issues raised in the aforesaid two applications are identical and, therefore, they should be taken up together. In the circumstances, both the applications (O.A. 1274/97 and O.A. 985/97) are being disposed of by a common order. For the sake of convenience, the facts in O.A. 985/97 have been referred to.

2. The applicants are aggrieved by the order passed by the respondents dated 16.11.1995 rejecting their request for stepping up ~~the~~ their pay with that of their juniors. The applicants preferred a representation against the order dated 16.11.1995 which was rejected by the respondents' order dated 6.5.1996, which has also been impugned by them. The relevant facts are that the applicants submit that juniors are getting more pay than them in the scale of Rs. 1400-2300 which is not denied by the respondents. 4 posts of Master Craftsmen were sanctioned by letter dated 21.2.1984 and the respondents had asked for options from eligible and

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willing 'Tradesmen 'A' for being appointed to these posts. 5 Tradesmen 'A', who were earlier known as Wireless Test Mechanics (WTM), were appointed as Master Craftsmen in the scale of Rs.425-640 on the recommendations of the DPC. One of the conditions for this promotion was that they will forego their normal line promotion which was later on removed by letter dated 26.6.1984. Thereafter, the respondents reverted all these 5 Master Craftsmen promoted in 1984 by their letter dated 7.8.1985 and promoted another five persons by order dated 28.8.1985. Those persons who were promoted as Master Craftsmen by orders dated 16.5.1984 and 18.5.1984 w.e.f. 2.4.1984 had remained as Master Craftsmen till they were reverted on 6.8.1985 and they got the benefit of fixation of pay in the higher scale. Among them were S/Shri Tara Dutt and Joginder Singh whose pay was fixed in the scale of Rs.560/- in the grade of Rs.425-640 w.e.f. 2.4.1984. The Master Craftsmen who were reverted to their original posts of Tradesmen 'A' by order dated 7.8.1985 had filed a Writ Petition in the High Court which was transferred to the Tribunal. The Tribunal quashed and set aside, the reversion order and directed the respondents to accommodate them as Master Craftsmen. Thus, they continued as Master Craftsmen against supernumerary posts till they were appointed on redesignated posts as Chargeman II w.e.f. 17.12.1990.

3. The applicants have submitted that in 1990 they also got promotions to the post of Chargeman Grade-II, Applicants 1, 3 and 4 w.e.f. 15.6.1990 and Applicant 2 w.e.f. 17.12.1990. The grievance of the applicants is that even though S/Shri Joginder Singh and Tara Dutt are junior to the applicants, they are getting higher pay although they are in

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the same scale. As their representations for stepping up their pay at par with the juniors have been rejected, they have filed this O.A. praying for a direction to the respondents to step up their pay to the level of their juniors with effect from 2.4.1984 when their juniors started getting more pay than them and to refix their pay accordingly. Shri S.K. Gupta, learned counsel for the applicants, has relied on the Tribunal's judgement (Ernakulam Bench) in Krishna Pillai Vs. Union of India (1994 (1) ATJ 36).

4. The respondents in their reply have submitted that Shri Tara Dutt and others were promoted on 2.4.1984 as Master Craftsman in the scale of Rs.425-640 and continued in that post by order of the Tribunal till they were appointed on the redesignated posts of Chargemen Grade-II. In these facts, they have submitted that the applicants, though senior to them, have no right for stepping up of their pay. They have submitted that stepping up the pay of the senior on promotion, who is drawing less pay than the junior is permissible only if the junior is promoted later on as per FR 22-C. They have submitted that as this rule as well as the conditions laid down in the Government of India Instructions for stepping up of pay are not fulfilled by the applicants, they are not entitled for the reliefs claimed in the O.A.

5. The conditions prescribed under/ to FR 22(1)(a) (i) ^{Instructions dt. 4.2.96} (old FR 22) is that (a) both the senior and junior officers should belong to the same cadre and the post in which they have been promoted on a regular basis should be identical in the same cadre, (b) the scales of pay of the lower and higher posts in which they are entitled to draw ^{pay to} should be identical, and (c) the ^{anomaly} should be directly as a result of the application of FR 22-C.

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6. In the Full Bench judgement of the Tribunal in B.L. Somayajulu and Others Vs. Telecom Commission and Others (1997(35) ATC 26(FB)), the Tribunal has held as follows:

"7. If a junior gets a higher pay, that does not mean that the senior also should necessarily get it without a foundation for such a claim in law. Fortuitous events are part of life. Fixation of pay is generally with reference to an individual. Various reasons may account for the grant of a higher pay to a junior. For example, undergoing a vasectomy operation or achieving excellence in sports or belonging to a certain community or even a wrong fixation of pay may bring about a situation where a junior gets a higher pay. If a junior is granted a higher pay for any of those reasons, that will not confer a corresponding right in a senior to get the same. If, for example, wrong fixation of pay in the case of a junior is to bring about a corresponding fixation in the case of a senior by applying the principle of equality, that would be an instance of using Article 14 to perpetuate illegality. If a senior is denied what he is entitled to get, he must challenge that denial or the preference extended to a junior. He cannot acquiesce in a wrong, and make a gain from that wrong by a comparison. Without challenging the wrong, he cannot claim a remedy from a wrong. Such collateral reliefs are alien to law. The decision of the Supreme Court in Chandigarh Administration Vs. Jagjit Singh (1995 (1) SCC 745) supports this view.

Without disguise the attempt of the senior, is to get the benefit of a higher pay, by comparison.

8. Ultimately the question boils down to this, what is the right of the senior and where does he find that right? Certainly he does not find that right in any law. The law governing the subject is FR 22-C which is now FR 22(1) (a)(i). Incidentally this rule is not challenged. It follows that only those anomalies that are directly referable to that rule, are amenable to the curative process thereunder, namely, stepping up, and no other. Equity does not offer a cause of action, as we have already pointed out. Discrimination arises only vis-a-vis law. Difference on facts—often non-actionable facts, does not give rise to a cause of action in law. The Supreme Court of India in comparable circumstances held State of A.P. Vs. G. Sreenivasa Rao (1989(10) ATC 61), that difference per se is not discrimination.

The Full Bench judgement of the Tribunal has noted that a contrary view has been taken in the earlier judgement in Krishan Pillai's case (supra) which will not

assist the applicants now. It has been laid down in the Full Bench that stepping up of pay can be granted only when there is a provision in law in that behalf, and only in accordance with that law and a claim for stepping up can be made only on the basis of a legal right and not on any pervasive notions of equity or equality unrelated to the context of the statutory law. (See also the recent judgement and Ors. of the Supreme Court in Union of India/Vs. C.P. Saxena (1998 SLJ(II) E-106). The juniors to applicants were promoted to the higher post and started getting higher pay from 2.4.84. Therefore, when the feeder posts of the juniors and that of the applicants are different, the principle of stepping up of pay cannot apply. In the facts of these cases as the applicants fail to fulfil the conditions laid down in FR 22 (1)(a)(i) (old FR 22-C) they are not entitled to the stepping up of pay. We, therefore, find no merit in these applications and the same are accordingly dismissed. Parties to bear their own costs.

7. Let a copy of this order be placed in D.A. 1274/97 also.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

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(S.R. Arulige)
Vice Chairman (A)

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