

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

Regn.No. OA 1436/1990

Date of decision: 05.02.1993

Shri Man Singh

...Applicant

Versus

Union of India through the Secretary,
Ministry of Defence and Others

...Respondents

For the Applicant

...Shri J.S. Bish, Counsel

For the Respondents

...Shri M.L. Verma, Counsel

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice-Chairman(J).

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member.

1. To be referred to the Reporters or not? *Yes*

JUDGEMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

The applicant who is working as a Carpenter in the office of the respondents filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

- (i) To set aside the impugned order dated 28.3.1989 whereby his pay scale has been reduced from Rs.950-1500 to Rs.800-1150;
- (ii) to restrain the respondents from making any recovery from

his pay and allowances; and

(iii) to direct the respondents to grant him annual increments due in November, 1989 and make payment with arrears.

2. We have gone through the records of the case and have heard the learned counsel of both parties. On 27.6.1990, the Tribunal passed an interim order directing that the respondents shall not effect any recovery of the alleged overpayment made to the applicant pursuant to the impugned order dated 28.3.1989. The interim order has been continued thereafter till the final hearing of the case.

3. The case of the applicant in brief is that he served in Bengal Engineers for 19 years and retired as Carpenter Class-I. He is an Ex-Serviceman. He was appointed as Carpenter by Garrison Engineer(P) Prem Nagar against an Ex-Serviceman quota vide order dated 26.11.86 in the pay scale of Rs.950-1500 plus usual allowances. Thereafter, he completed his probation period of 2 years on 25.11.1988.

4. On 28.3.1989, the respondents issued the impugned order reducing his pay scale from Rs.950-1500 to Rs.800-1150. Apart from this, they had also directed to recover the overpayment paid to him. The contention of the respondents is that there are two scales of pay of Rs.800-1150 and Rs.950-1500 prescribed for the post of

Carpenter. The former scale is to be given at the initial appointment whereas the latter scale is given on completion of 2/3 years of service. The appointing authority inadvertently mentioned in the appointment letter the pay scale of Rs.950-1500 and when this fact came to notice, the mistake has been rectified by issuing the amendment on 28.3.1989.

5. The factual position is that the applicant was validly appointed by direct recruitment against reserved vacancy of Ex-Servicemen as Carpenter in the scale of pay of Rs.950-1500 on the recommendations of a duly constituted board of officers and in accordance with the provisions of the Recruitment Rules of 1971. The pay scale of Carpenter as per the Second Pay Commission and as indicated in the 1971 Rules was Rs.85-128. As per the Third Pay Commission the pay scale of Carpenter was revised to Rs.210-290. Subsequently, on the recommendations of an Expert Classification Committee which was accepted by the Government, the pay scale of Carpenter was upgraded to Rs.260-400. The recommendations of the Expert Committee were made effective and implemented with effect from 16.10.1981 as is clear from the judgment of the Supreme Court in Bhagwan Sahai Carpenter and Others Vs. U.C.I. & Another, 1989(1) ATLT (SC) 473.

6. The learned counsel for the respondents submitted that the aforesaid decision of the Supreme Court related to Skilled Carpenter and is not applicable to the facts of the present case. He also submitted that the pay can be refixed without giving any opportunity (Vide O.P. Verma Vs. CSIR, 1990(13) ATC 460).

7. There is nothing on record to indicate that the respondents amended the recruitment rules so as to provide two pay scales for the category of Carpenters and it was pursuant to such amendment that the lower pay scale has been given to the applicant by the impugned order. The action taken by the respondents to prescribe two pay scales for the category of Carpenters on the basis of the executive instructions is not legally sustainable.

8. In our view, the respondents are estopped from modifying the pay scale of the applicant from Rs.950-1500 to Rs.800-1150 after nearly 2 years and 6 months from the date of his appointment. Such an action is neither fair nor just.

9. Accordingly, we allow the present application and set aside and quash the impugned order dated 28.3.1989. We hold that the pay scale of the applicant shall be continued as Rs.950-1500 from the date of his initial appointment. The respondents are also restrained from recovering any amount from him on the basis of the impugned order dated 28.3.1989. The applicant shall be granted ^{and the arrears.} The ^{interim order already passed} increments due in November, 1989

is hereby made absolute. The respondents are directed to comply with the aforesaid directions expeditiously and preferably within a period of 3 months from the date of receipt of this order.

There will be no order as to costs.

B.N. DHOUDIYAL
(B.N. DHOUDIYAL)
MEMBER (A)
05.02.1993

P.K. KARTHA
(P.K. KARTHA)
VICE CHAIRMAN (J)
05.02.1993

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