

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1927
T.A. No.

199 0

DATE OF DECISION November 14, 1994.

All India Association of EME
Supervisors Tech. through Dr. Ankar Petitioner s.

Singh Khalsa & OrsShri D.P. Sood

Advocate for the Petitioner(s)

Versus

U.O.I. & Another

Respondent s.

Shri M.K. Gupta

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice S.C. Mathur, Chairman.

The Hon'ble Mr. P.T. Thiruvengadam, Member (A)

1. To be referred to the Reporter or not? *Yes*2. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

(Signature)
(S.C. Mathur)
Chairman
14.11.1994.

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1927/90

New Delhi this the 14th Day of November, 1994

Hon'ble Shri Justice S.C. Mathur, Chairman

Hon'ble Shri P.T. Thiruvengadam, Member (A)

1. All India Association of EME Supervisors Tech
through Dr. Onkar Singh Khalsa,
7/18 West Patel Nagar,
New Delhi-110 008.

2. Senior Chargeman Shri Narinder Kumar Sharma,
S/o Shri Shri Dutt Sharma,
Resident of E-5/12 Rajiv Gali,
Dayalpur Extension,
New Delhi-110 094.

3. Senior Chargman Shri Parkash Chand
S/o Shri Behari Lal,
Resident of WZ-379 D/2 Hari Nagar,
New Delhi.

... Applicants

(By Advocate : Shri D.P. Sood)

Versus

1. Union of India Service through Secretary
Ministry of Defence, South Block,
New Delhi-110 011.

2. Director General EME,
EME Directorate,
Army Headquarters,
New Delhi.

... Respondents

(By Advocate : Shri M.K. Gupta)

O R D E R (Oral)

Hon'ble Shri Justice S.C. Mathur, Chairman

The only dispute raised in this Original Application relates to the principle for fixation of pay for class of persons represented by applicant No. 1 namely the All India Association of EME Supervisors Technical.

2. Prior to 1986 there were three categories of supervisors vis - (i) Chargeman (Rs.380-560) (ii) Senior Chargeman (Rs. 425-700) and (iii) Foreman (Rs. 550-750). With effect from 1.1.1986 the scales

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of pay of chargeman and senior chargeman were merged and a single pay scale of Rs. 1400-2300 was prescribed. This was done on the recommendation of the Fourth Pay Commission. Despite merger of the two scales the designations of chargeman and senior chargeman continued till the Rules were amended with effect from 14.2.1992. Between 1.1.1986 and 14.2.1992 certain orders were passed posting chargemen as senior chargemen in the pay scale of Rs. 1400-2300. These posting orders, it appears, described the posting as promotion. The initial pay of such promotees was fixed at the stage next above the notional pay arrived at by increasing their pay in respect of the post of chargeman by an increment at the stage at which such pay had accrued. This was objected to by the Audit Section who was of the opinion that after the merger of the pay scales the promotees could not be said to have moved to another post carrying duties and responsibilities of greater importance than those attached to their earlier post. In view of this audit objection, the pay fixation was sought to be reviewed. The applicants protested by filing representations but without success. They accordingly approached the Tribunal seeking a direction to the respondents to treat the post of senior chargeman as promotion post carrying duties and responsibilities of higher importance and give consequential benefits. On 13.11.1990 an interim order was passed whereby the process of refixation of pay was not stayed but the respondents were directed not to effect any recovery

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as a result of refixation of pay provided the applicants furnished suitable undertaking to the satisfaction of the respondents to refund the amount in the event of their losing in the Original Application.

3. The application has been contested by the respondents on whose behalf it has been urged that on promotion the pay of the applicants was fixed under Article 156 A of the Civil Service Regulation which was initially approved by the Audit Section in respect of two persons but was later objected to and hence refixation of pay was under active consideration. The view of the Audit Section was that after the merger of the scales of pay of chargeman and senior chargemen, the orders posting chargeman as senior chargemen could not be termed as promotion but only change of post and therefore the increment given to them could not be given.

4. The matter is governed by the provisions of Fundamental Rules 22, relevant portion of which reads as follows:

"F.R.22 (I) The initial pay of a Government servant who is appointed to a post on a time-scale of pay is regulated as follows:-

(a)(1) where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to

the fulfilment of the eligibility condition as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty-five only, whichever is more.

(2) When the appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time-scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis:

(III) For the purpose of this rule, the appointment shall not be deemed to involve the assumption of duties and responsibilities of greater importance if the post to which it is made is on the same scale of pay as the post, other than a tenure post, which the Government servant holds on a regular basis at the time of his promotion or appointment or on a scale of pay identical therewith....."

5. The submission of the learned counsel for the applicants is that the pay in the present case was required to be fixed under FR-22-C which reads as follows :-

"Notwithstanding anything contained in these Rules, where a Government servant holding a post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued:....." (Emphasised).

From the emphasised portion in the above Rule, it is apparent that in order to claim increment in the fixation of pay under this Rule, the applicant will have to establish two things —

- (i) the post of Senior Chargeman carries duties and responsibilities of greater importance than the post of Chargeman does; and,
- (ii) the post of Senior Chargeman has a time-scale of pay different (higher) from the one for the post of Chargeman.

6. Admittedly, with effect from 1.1.1986, the posts and Senior Chargeman of Chargeman carried the same scale of pay, viz., Rs.1400-2300/-. Accordingly, the second ingredient is lacking.

7. Let us now examine the applicants' averments regarding the duties of the two posts. In paragraph 4 (j) of the application, the applicants have stated that the following duties and responsibilities are discharged by the Senior Chargeman :-

- "i) will take charge of Section in 4th ecklon Workshop if required.

Note - to do so this does not apply
to Supervisors Tech Grade III
(redesignated Chargemen)

- ii) will officiate for short periods as Group/Section Officer.

- iii) will function as member of stock taking board, member of board of officers like audit board, accident inquiry board, local purchase, condemnation and trade testing board and member of court of inquiries etc."

In support of the plea Annexure A-3 has been relied upon. The Annexure is described as "charter of duties". Neither the application nor the document indicates the authorship of the document. It does not bear any date. Its source and authority, its status and legal value are all lacking. Accordingly, no reliance can be placed upon Annexure A-3.

8. We may for a moment assume that Annexure A-3 is a legal document and can be relied upon for ascertaining the nature of duties performed by Chargeman and Senior Chargeman. A perusal of the document shows that it merely deals with utilisation of the services of Civilian Supervisors (Technical) for supervising the work of tradesmen posted under them. The term "Civilian Supervisor (Technical)"

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is not confined to Senior Chargeman. It embraces all Supervisors -- Chargeman, Senior Chargeman for, and Foreman. In paragraph 4 (d) the applicants themselves have stated, "Supervisors Technical consisting of following three categories --

Chargeman in pay scale Rs.380-560

Sr. C'Man in pay scale Rs.425-700

Foreman in pay scale of Rs.550-750"

Therefore, the enumeration of duties in Annexure A-3 cannot be confined to the post of Senior Chargeman.

9. In Annexure A-3, it is also mentioned, "It is not possible to lay down an exhaustive list of their supervisory responsibilities, but the following are some of the more important aspects of their duties." From this, it is apparent that the enumeration of the duties of Chargeman and Senior Chargeman is not exhaustive. There is no separate enumeration of the duties of Chargeman and Senior Chargeman. Accordingly, on the basis of the enumeration of duties contained in Annexure A-3, it is not possible to hold that the post of Senior Chargeman carries duties and responsibilities of greater importance.

10. In paragraph 4(j), it is further mentioned that a Chargeman controls and supervises the work of technicians of his trade as leader while a Senior Chargeman controls and supervises the work of number of Chargemen and the tradesmen employed in whole of the Section and is accountable for the whole of his Section to the Group/Section Officer. This flows from the hierarchy of posts and not from greater importance of duties. Therefore, nothing turns upon the statement contained in paragraph 4(j).

11. There is another reason for not accepting the applicants' plea that the post of Senior Chargeman carries duties of greater importance. The 4th Pay Commission, obviously after examination of the nature of duties performed by Chargeman and Senior Chargeman, recommended merger of the scales of pay prescribed for the two posts. The recommendation was accepted and the scales of pay were actually merged. It is reasonable to assume from this that the Pay Commission was of the opinion that the work done by incumbents of the two posts was identical or similar or there was no material difference between the duties performed by the incumbents of the two posts. In taking this view, we are supported by the decision of their lordships of the Supreme Court in State of U.P. & Ors. vs. J. P. Chaurasia & Ors.*¹ as follows :-

"The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the Court should normally accept it. The court should not try to tinker with such equivalent unless it is shown that it was made with extraneous consideration."

12. The above observations were relied upon by a Division Bench of the Tribunal sitting at Jodhpur in V. K. George vs. Union of India & Ors. - (1992) 19 ATC 686,

*1 AIR 1989 SC 19 =
(1989) 1 SCC 121 =
(1988) 8 ATC 92

for holding that the petitioner of that case was not entitled to get increment in fixation of his pay when he was promoted from the post of Stenographer (Special Grade) to the post of Income Tax Officer, as on the recommendation of the 4th Pay Commission both the posts had been placed in the same pay scale of Rs.1640-2900. In paragraph 4 of the report, the Division Bench has observed :-

".....Since the Pay Commission has awarded the same pay scale to the two posts, it is reasonable to hold that prima facie, the duties and responsibilities attached to the two posts were considered by the Commission to be similar....."

This authority has full application to the facts of the present case. Equivalence of duties is not the function of this Tribunal. It is the function of the administrative authority.

13. Apart from the above, clause III of FR-22 puts the matter beyond the pale of controversy. It is a deeming provision. It says that an appointment shall not be deemed to involve the assumption of duties and responsibilities of greater importance if the scales of pay of both the posts are the same. On the date the applicants were promoted, the posts of Chargeman and Senior Chargeman were having identical scale of pay, viz., Rs.1400-2300. The purpose of a deeming clause is to create a legal fiction. A state of affairs may not actually exist, yet, legally it is assumed to exist. In view of the deeming provision contained in Clause III it has to be assumed that the post of Sr. Chargeman does not carry the duties and responsibilities of greater importance, irrespective of the factual position.

14. Our interpretation of F.R. 22-C is fully borne out by the third proviso to the said Rule which reads as follows :-

"Provided that if a Government servant either —

(1) has previously held substantively, or officiated in —

(i)

(ii) a permanent or temporary post on the same time scale, or

(iii); or

(2);

then proviso to F.R.22 shall apply in the matter of the initial fixation of pay and counting of previous service for increment."

15. In view of the fact that the time scale of the pay from which the applicant was promoted was the same as that of the promoted post, this proviso is fully applicable. In view of this provision, the applicant's initial pay will have to be fixed in accordance with the proviso to F.R. 22. Relevant portion of the said proviso reads as follows :

"Provided, both in cases covered by clause (a) and in cases, other than cases of re-employment after resignation or removal or dismissal from the public service, covered by clause (b), that if he either —

(1) has previously held substantively or officiated in —

(i)

(ii) permanent or temporary post on the same time-scale, or

(iii) a permanent post or a temporary post (including a post in a body, incorporated or not, which is wholly or substantially owned or

controlled by the Government)
on an identical time-scale; or

(2)

then the initial pay shall not, except in cases of reversion to parent cadre, governed by proviso (1)(iii) be less than the pay, other than special pay, personal pay or emoluments classed as pay by the President under Rule 9 (21) (a) (iii) which he drew on the last occasion, and he shall count the period during which he drew that pay on such last and any previous occasion for increment in the stage of the time-scale equivalent to that pay....."

In the case on hand, the time-scales of the posts of Chargeman and Senior Chargeman were identical and, therefore, under the above provision, the applicant was only entitled to protection of the last pay drawn by him as Chargeman. This protection has been given to him; about this, there is no dispute.

16. F.R.22 reproduced hereinabove was substituted by notification dated 30.8.1989 published in the Gazette of India as G.S.R. 679 dated 16.9.1989 as amended by notification dated 28.11.1990. The provisions of the present F.R. 22 and of the old F.R. 22-C are similar and lead to the same result.

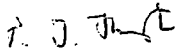
17. In support of his claim that the applicant was entitled to the increment referred to in F.R.22-C, the learned counsel for the applicant cited the following authorities :-


(1) 1989 (2) SLJ 115 (CAT-Ernakulam) —
P. Daniel & Ors. vs. Chairman, CBOT & Ors.

- (2) 1993 (2) SLJ 95 (CAT-Principal Bench) —
Ramesh Chand vs. Union of India & Ors., and
(3) 1993 (2) SLJ 305 (CAT-Jabalpur) —
Dhyaneshwar Nandan & Ors. vs. Union of India.

All the above decisions are by Single Benches. These decisions do assist the applicants. However, in view of the Division Bench decision in V. K. George (supra), with which we respectfully agree, these decisions are of no help to the applicants. In the said case, express dissent has been recorded in respect of P. Daniel's case (supra). The dissent has been recorded on the basis of the judgment of the Supreme Court in J. P. Chaurasia's case (supra).

18. In view of the above, the application fails and is hereby dismissed. There shall be no orders as to costs. Interim order, if any operating, shall stand discharged.


(P. T. Thiruvengadam)
Member (A)


(S. C. Mathur)
Chairman

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