

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 891 of 2004

Thursday this the 24th day of July 2008

Hon'ble Mr. K.S. Menon, Member (A)

Om Prakash Srivastava, Retd. Assistant Foreman, a/a 69 years, S/o Late H.P. Srivastava, R/o 16/58, New Defence Colony, Murad Nagar, Ghaziabad.

Applicant

By Advocate Sri K.K. Mishra

Vs.

1. Union of India, through Secretary, Defence Production & Supply, Ministry of Defence, New Delhi.
2. Chairman/Director General, Ordnance Factory, 10-A, Khudi Ram Bose Road, Calcutta.
3. General Manager, Ordnance Factory, Muradnagar.
4. Ramphal, Personnel No. 853252, C/o General Manager, Ordnance Factory, Murad-nagar.

Respondents

By Advocate Sri Saumitra Singh

O R D E R

By K.S. Menon, A.M.

This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985 and is filed against the impugned order dated 14.08.1999 (annexure A-8) by which the pay of the applicant has been fixed notionally at Rs.2450/- per month on promotion as Assistant Foreman, while that of respondent No. 4 has been fixed at Rs.2675/- per month. This anomaly has resulted in the applicant's pension being wrongly ^{In Calculated} ~~Calculated~~. The applicant has therefore sought the following relief (s):-

- (i) *This Hon'ble Court may graciously be pleased to quash the impugned order dated 14.08.1999 qua to the applicant.*
- (ii) *This Hon'ble Court further be pleased to direct the respondents to step up the pay of Applicant Rs.2675/- as that of respondent No. 4 with all consequential benefits including arrears of pay and allowances and other retiral benefits.*

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(iii) *This Hon'ble Court further be pleased to pass such other and/or further order as may be deemed necessary in the circumstances of the case."*

2. The facts of the case are that the applicant was holding the post of Chargeman when the respondent No. 2 issued a promotion order of Chargeman to Assistant Foreman in the scale of Rs.2000-3200 vide Order No. 999 dated 26.05.1993 (annexure A-1). Respondent No. 4 was shown in the aforesaid promotion order at serial No. 7 while the applicant's name was omitted. The respondents issued order No. 1739 dated 22.09.1993 in which respondent No. 4's (junior to the applicant) pay was fixed at Rs.2675/- w.e.f. 31.05.1993. Subsequently respondents issued another promotion order dated 15.10.1993 from Chargeman Gr. I to Assistant Foreman. The applicant's name did not find a place in this promotion order also. The applicant who superannuated from service on 31.12.1993 continued to correspond with the respondents after retirement regarding his seniority and promotion and consequent pay fixation on par with respondent No.4.

3. The applicant holds the view that he was not considered for promotion due to wrong assignment of seniority. The respondents subsequently finalized the seniority list and the applicant was assigned the correct seniority position by interpolating his name in the said seniority list and his name finds a place at Srl. No. 1839 A (Annexure A-4 of the O.A.). Based on this revised seniority list the applicant was promoted notionally to the post of Assistant Foreman w.e.f. 07.05.1993 vide order dated 03.04.1999 (annexure A-5) whereas respondent No. 4 was promoted w.e.f. 31.05.1993 vide order dated 22.09.1993 (annexure A-2). The pay scale of respondent No. 4 was fixed at Rs.2675/- per month w.e.f. 31.05.1993 while the applicant's pay was fixed at Rs.2450/- per month w.e.f. 07.05.1993. The applicant submitted several representations seeking parity with respondent No. 4 and recalculation of pension vide his representations dated 03.05.1999, and 12.08.1999. Prior to issue of promotion order dated 03.04.1999 the applicant filed an Original Application No. 134 of 1999 in this Tribunal seeking relief for consideration of his promotion. This O.A. was dismissed in default for non-prosecution on 25.08.1999. The respondents then issued an order dated 14.08.1999 fixing the applicant's pay at Rs.2450/- w.e.f. 07.05.1993 with a remark that as the applicant retired on 31.12.1993 he would not be entitled for any arrears of pay due to such a fixation (annexure A-8 of the O.A.) He



then filed another O.A. No. 697 of 2002 seeking the same relief, this O.A. was also dismissed vide order dated 01.05.2003 (Annexure A9 and A-9A). The applicant thereafter submitted representations dated 08.12.2000 and 01.11.2003 pointing out that though respondent No. 4 was junior to him in the cadre of Assistant Foreman, the applicant's pay on promotion was fixed below that of respondent No. 4 and sought removal of anomaly by stepping up his pay as a senior on promotion and drawing less than his junior. In support of his contention the applicant referred to Rule 3 of Fixation of pay on promotion, which he has referred in para-4 (13) of the O.A., and reads as under: -

"3. Removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior. - - - - -

In order to remove the anomaly of a Government servant promoted or appointed to a higher post drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely: -

- (a) *Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;*
- (b) *The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;*
- (c) *The anomaly should be directly as a result of the application of the rule. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer."*

In view of the above, the applicant has prayed for the reliefs referred in para-1 above.

4. The respondents on notice have filed their Counter Affidavit, in which they have refuted all the arguments put forth by the applicant. Their first point is regarding the limitation aspect. They contend that since the 14.08.1999 order is being challenged the O.A. is time barred and is liable to be dismissed. The respondents state that the applicant

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cannot claim parity at par with respondent No. 4 at this belated stage. They contend that the applicant was promoted from Chargeman Grade I (technical) to Assistant Foreman (technical) notionally w.e.f. 07.05.1993 retrospectively vide Factory Order Part II No. 566 dated 03.04.1999 and his pay was fixed at Rs.2450/- in the scale of Rs.2000-3200 vide Factory Order Part II No. 1477 dated 14.08.1999. This they claim has been done in accordance with the rules.

5. On the issue of parity with respondent No.4 and Shri S.P. Sharma at serial No. 1841 of seniority list as claimed by the applicant the respondents' state that this claim is misconceived. Sri S.P. Sharma was promoted as Chargeman I (T) w.e.f. 01.08.1981 while the applicant was promoted to the same grade on 23.06.1986, hence Shri Sharma had been drawing a higher pay in the lower scale than the applicant, this was already communicated to the applicant vide Ordnance Factory Muradnagar letter No. R/1/4-PC dated 16.09.1999 hence the applicant's claim is without basis. The same situation exists in Sri Ramphal's (respondent No. 4) case also as mentioned in paras-17 and 19 of their Counter Affidavit. In support of their stand respondents have relied upon the applicant's own citation of the Rule position at paragraph No. 4 (13) (3) of the O.A. in this regard, which states that the anomaly should be directly as a result of the application of the rule. For example, if even in the lower post, the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer. They therefore aver that the submissions made by the applicant are without merit and liable to be rejected.

6. Heard Shri K.K. Mishra, learned counsel for the applicant and Shri Saumitra Singh, learned counsel for the respondents.

7. I would like to address the issue of limitation first. Admittedly, the applicant filed this O.A. in 2004 after the respondents granted him notional promotion and accordingly fixed his pay vide order dated 14.08.1999, which has been impugned in this O.A. This order was issued six years after the applicant retired. Perusal of the pleadings in this case indicate that the applicant had been agitating before the respondents while in service regarding stepping up his pay with reference to his juniors who were promoted before him. These efforts seem to have got an impetus once the order dated 03.04.1999 was

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issued granting him promotion as Assistant Foreman w.e.f. 07.05.1993. There is a recurring cause of action and the delay in filing the O.A. by the applicant, who is a pensioner, is condoned in the larger interest of justice and the case is being dealt with on merits.

8. At the outset it appears expedient to refer to Rule position regarding the present case, mentioned in FR & SR, 1961 which is as under: -

(b) *As a result of FR 22 (I) (a) (1) application in the revised scales of CCS (RP) Rules, 1997 - In cases, where a Government servant promoted to a higher post before the 1st day of January, 1996, draws less pay in the revised scale than his junior who is promoted to the higher post on or after the 1st day of January, 1996, the pay of the senior Government servant should be stepped up to an amount equal to the pay as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior Government servant subject to the fulfillment of the following conditions, namely: -*

(a) *both the junior and the senior Government servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre.*

(b) *the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay, should be identical.*

(c) *the senior Government servants at the time of promotion have been drawing equal or more pay than the junior.*

(d) *the anomaly should be directly as a result of the application of the provisions of Fundament Rule 22 or any other rule or order regulating pay fixation on such promotion in the revised scale. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provisions of this Note need not be invoked to step up the pay of the senior officer."*

9. The applicant has relied on the following Judgments/Orders in support of this case: -

i) CAT Madras Bench OA No. 1069 of 2001 R. Krishnaswamy vs. U.O.I. & Others (2003 (2) ATJ 651).

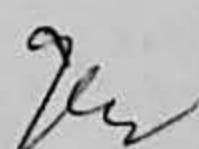
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ii) CAT Allahabad order dated 1.12.2000 in OA 347 of 1997
 Raghuvendra Pratap Singh and 2 others vs. U.O.I. & Ors.

The facts and circumstances of the above cases are different from the facts and circumstances of the present case and cannot therefore be said to cover this case. It would however be relevant to reproduce relevant extracts of the Supreme Court's Judgment in Union of India and others Vs. P. Jagdish and others (1997) 3 SCC 176, which reads: -

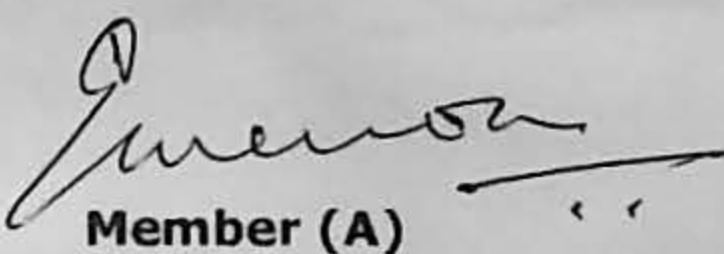
"This principle of stepping up which we have upheld would prevent violation of equal pay for equal work but grant of consequential benefit of the difference of salary would not be correct for the reason that the respondents had not worked in the post to which 35% [sic Rs.35 as] special pay was attached in the lower cadre. But by reason of promotion the promotee-juniors who worked on the said posts, in fact, performed the hard duties and earned special pay. Directions to pay arrears would be deleterious to inculcation of efficiency in service. All persons who were indolent to share higher responsibilities in lower posts, on promotion would get accelerated arrears that would be deleterious to efficiency of service. Therefore, though direction to step up the pay on notional basis is consistent with Article 39 (d) of the Constitution, it would be applicable only prospectively from the date of promotion and the fixation of the scale, stepping up of the scale of pay would be prospective to calculate future increments on the scale of pay in promotional post only prospectively. The appeal is dismissed but in the circumstances there would not be any order as to costs."

10. Reference to the above Supreme Court Judgment is made purely to indicate that the respondent No. 4 and Shri S.P. Sharma (not arrayed as a party in this O.A.) both juniors to the applicant were drawing higher pay than the applicant in the lower grade of Chargeman-I (T) and therefore their pay fixation on promotion as Assistant Foreman was higher than that of the applicant as per rules. This is also in conformity with sub para-3 of FR 22-C [Now FR 22 (1) (a) (1) wherein under Government of India instructions 27 under FR 22 it has been indicated that such instances as above do not constitute an anomaly as mentioned in DOP&T OM No. 4/7/92-Estt. (Pay-I) dated 04.11.1993. The applicant has also not shown in his submissions that he was drawing higher pay than his juniors in the lower grade of Chargeman I (T). Since Sri Ramphal and Sri S.P. Sharma, juniors to the applicant were drawing higher pay in the category of Chargeman I (T) ^{by their} pay was fixed at Rs.2675/- as per rules as such the applicant cannot claim



parity with them. This has also been communicated to the applicant in response to his representation dated 12.08.1999 vide respondents' letter dated 16.09.1999. Despite this the applicant has been submitting repeated representations and filing Original Applications without bringing new facts on record, which have been dismissed by this Tribunal. The respondents on the basis of promotion as Assistant Foreman w.e.f. 07.05.1993 issued on 03.04.1999 re fixed the applicant's pay at Rs.2450/- w.e.f. 07.05.1993. The fixation of pay as communicated in the impugned order dated 14.08.1999 is in order in view of the preceding paras. The revised pensionary and other retirement benefits on the basis of the above re fixation of pay were paid to the applicant on 29.02.2000 under intimation to him. Nothing further remains to be done by the respondents. The applicant has therefore not made out a case warranting any interference with the impugned order dated 14.08.1999 or for grant of other reliefs prayed for by him.

11. The O.A. is, therefore, without any merit and is liable to be dismissed, and ^{is in} accordingly dismissed. No costs.


Member (A)

/M.M/