

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.421/1998

Wednesday this the 7th day of February, 2001.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI T.N.T.NAYAR, MEMBER (A)

K.S.Sadasivan Achary,
Tradesman 'D',
SASMO/IISU
Vattiyoorkavu,
Thiruvananthapuram-13.Applicant

(By Advocate Mr.Sasidharan Chempazhanthiyil)

vs.

1. Vikram Sarabhai Space Centre
rep. by its Head Personnel &
General Administration,
Indian Space Research Organisation,
Thiruvananthapuram.
2. Union of India rep. by its Secretary,
Department of Space, New B.E.L.Road,
Bangalore-560094.Respondents

(By Advocate Shri C.N.Radhakrishnan)

The Application having been heard on 8.1.2001, the Tribunal
on 7.2.2001 delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant while holding the post of Tradesman 'D' in the Bhabha Atomic Research Centre (BARC for short) and drawing a basic pay of Rs.1470/- in the scale Rs.1320-2040 applied for appointment to the post of Tradesman 'B' in the scale Rs.1150-1500 under the first respondent and his application was forwarded by the BARC. The applicant having been selected was appointed as Tradesman 'B' under the 1st respondent, where he joined on 21.12.1992. The applicant's pay was fixed in the minimum of the scale Rs.1150-1500. However, the competent authority by order dated 16.5.94 (A4) treated the service of the

applicant from 19.11.84 to 18.12.92 with BARC Bombay as qualifying service for the purpose of pension and other retiral benefits in ISRO/Department of Space condoning the interruption of two days in terms of Rule 26 (3) of the CCS (Pension) Rules, 1972. The grievance of the applicant is that while he was on appointment to another post entitled to have his pay drawn in BARC protected and his pay regulated in accordance with the provisions contained in FR 22 (1) (a) (2) the respondents refused to do so and fixed his pay at the minimum of the scale of Rs.1150-1500 despite representations made in that behalf. His representation made to the Ist respondent was rejected by Annexure.A8 order dated 18.3.94 and in reply to his representtton dated 11.9.96 addressed to the Chairman of ISRO, the applicant was given the Annexure.A9 order dated 11.4.97 informing that his request for protection of pay has not been acceded to. It is aggrieved by that the applicant has filed this application seeking to have the impugned orders A8 and A9 set aside and for a declaration that he is entitled to have his pay fixed under FR 22(1)(a)(2) on joing ⁱⁿ the first respondent and for a direction to the respondents to pass orders on Annexure A7 representation made by him.

2. The respondents in their reply statement contend that as the applicant had been sponsored by the Employment Exchange his appointment under the Ist respondnet was only as a direct recruitee .The contend that as the BARC had

initially refused to forward his application and forwarded the application only on reconsideration and as the applicant was selected for appointment to the post of Tradesman 'B' in the scale Rs.1150-1500 which he accepted, he is not entitled to claim higher fixation of pay.

3. The short question that falls for resolution in this application is whether the applicant who was holding the post of Tradesman 'D' on an officiating basis and Tradesman 'C' on a substantive basis and drawing the basic pay of Rs.1470/in BARC is entitled to have his pay regulated and fixed in accordance with the provisions contained in FR 22(1)(a)(2).

4. That the applicant was holding the post of Tradesman 'C' substantively and was officiating as Tradesman 'D' in the scale Rs.1320-2040 with the basic pay of Rs.1470/- in the BARC which is one of the departments under the Department of Space while he joined the first respondent which again is under the Department of Space is not disputed. The only ground on which the claim of the applicant is resisted is that the applicant's appointment would be treated only as a first appointment through employment exchange and that he was informed by the offer of appointment that his basic pay would be fixed at Rs.1150/- and that no claim for higher pay or higher grade would be entertained.

5. Since the applicant was a Government servant holding

substantively the post of Tradesman 'C' and officaiting as Trademan 'D' in the scale Rs.1320-2040 in the BARC under the Department of Atomic Energy on appointment to the post of trademsn 'B' in the VSSC under the Department of Space in the same Ministry the provisions of FR which would apply for fixation and regulation of the applicant's pay would be FR 22(1)(a)(2). Though the BARC intitally declined to forward the application of the applicant to the Ist respondent it is borneout from the pleadings and materials placed on record that on reconsideration of the issue, the BARC forwarded the applicant's application to the Ist respondent on condition that if he be selected and appointed he might have to resign from the BARC. It is also not disputed that the period of service of the applicant under the BARC has since been treated as qualifying service for the purpose of pension by the A4 order issued by the Ist respondent. Therefore, just for the reason that the applicant's candidature was sponsored by the Employment Exchange it cannot be said that the applicant's pay would not be regulated under the Provisions of FR 22. That in the offer of appointment the applicnat was told that his pay would be fixed at Rs.1150/-and that he accepted the offer is also not a valid reason for denying the regulation of pay to which he is entitled under the provisions of the Fundamental Rules. FR 22(1)(a)(1) deals with the case where a Government servant holding a post other than a tenure post in substantive/temporary or officiating capacity is promoted or appointed in a substantive/temporary or officiating capacity

on another post carrying higher duties and responsibilities whereas FR 22(1)(a)(2) deals with the manner in which the pay is to be regulated while the appointment is to a new post which does not involve such higher responsibilities.

We may profitably extract the provisions as under:

- FR 22(1)(a)(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.

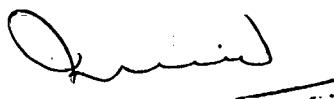
Provided that where the minimum pay of the time scale of the new post is higher than his pay in respect of the post held by him regularly, he shall draw the minimum as the initial pay....."

6. In this case as the applicant while holding the post of Tradesman 'D' on an officiating capacity in the scale Rs.1320-2040 and drawing a basic pay of Rs.1470/- was appointed to the post of Tradesman 'B' under the 1st respondent in the scale of pay of Rs.1150-1500 he is entitled to have his pay regulated in terms of FR 22(1)(a)(2). His case is fully covered by the said provision. The contention of the respondents to the contrary is untenable and against the rules.

7. In the result, in the light of what is stated above, the application is allowed. The impugned orders Annexure.A8 and A9 are set aside declaring that the applicant is entitled to have his pay fixed under FR 22(1)(a)(2) on joining the service under the 1st respondent. We direct the

respondents to fix the applicant's initial pay accordingly and to make available to the applicant the monetary benefits flowing therefrom. The above direction shall be complied with as expeditiously as possible at any rate not later than a period of two months from the date of receipt of a copy of this order. There is no order as to costs.

Dated the 7thday of February, 2001



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

s.

List of annexures referred to:

Annexure.A4: True copy of the office order No.VSSC/GSS/OPS/27226/61 dated 16.5.94 issued by the Ist respondent.

Annexure.A7: True copy of the representation dated 4.11.97 submitted by the applicant to the 2nd respondent.

Annexure.A8: True copy of the Memorandum No.VSSC/EST/F,1(13) dated 18.3.1994 issued by the Ist respondent.

Annexure.A9: True copy of the Memorandum No.VSSC/EST/F,1(14) dated 11.4.1997 issued by the Ist respondent.