

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.426/2006

Wednesday this the 2nd day of January 2008.

CORAM:

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER**

P.C.Prasheela,
W/o M.P.Varghese, Assistant Store Keper,
Base Victualling Yard,
Naval Base, Kochi.

Applicant

(By Advocate Shri T.A.Rajan)

Vs.

1. Union of India, represented by Secretary, Ministry of Defence, New Delhi.
2. Flag Officer Commanding in Chief, Head Quarters, Southern Naval Command, Kochi-4.
3. The Establishment Officer, Material Organization, Naval Base, Kochi-4. Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC)

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The brief contents of the O.A. are as under:

The applicant worked as Safaiwala under the respondents from 11.10.1979 till 1.8.1983. From 2.8.1983 she was appointed as Assistant Storekeeper in the scale of pay of Rs.260-400, (revised scale Rs.950-1500) and was granted increments in the said scale of pay i.e. Rs.266/- from 10.8.84 and Rs.272/- from 20.8.85 to 23.9.85. She had proceeded on maternity leave from 1.10.85 to 28.2.1985. Back from maternity leave, she was again appointed as Assistant

Storekeeper with effect from 1.4.86 and was later regularly appointed to the said post with effect from 5.11.86. But on appointment after her maternity leave, she was given only the minimum of the pay scale i.e. Rs.950/- in the revised scale of pay of Rs.950-1500. The applicant submitted a representation to the second respondent vide Annexure A2. As no reply was given, the applicant submitted several representations to the second respondent requesting to refix her pay on 1.4.86 taking into account her last pay as Rs.272. The second respondent rejected the representation by order dated 13.6.05 vide Annexure A-4. This is challenged by the applicant.

2. In the reply the respondents have stated as under:

The service details of the applicant :-

- a) Appointed as Safaiwala with effect from 11th October 1979.
- b) While serving as Safaiwala, engaged as Asst. Storekeeper (Officiating) for the following period with intermittent breaks:-
 - i) 02-08-83 to 21-10-83 (2 days break on 22 and 23-10-83)
 - ii) 24-10-83 to 23-12-83 (2 days break on 25 and 26-12-83)
 - iii) 27-12-83 to 31-03-84 (2 days break on 01 and 02-04-84)
 - iv) 03-04-84 to 30-06-84 (2 days break on 01 and 02-04-84)
 - v) 03-07-84 to 28-09-84 (2 days break on 01 and 02-10-84)
 - vi) 03-10-84 to 29-12-84 (2 days break on 30 and 31-12-84)
 - vii) 01-01-85 to 30-03-85 (2 days break on 31 and 01-04-85)
 - ix) 02-04-85 to 24-06-85 (2 days break on 25 and 26-06-85)
 - x) 27-06-85 to 23-09-85
- c) Reverted to her original post of Safaiwala with effect from 24th September 1985.
- d) While holding the post of Safaiwala, proceeded on maternity leave for the period from 01st October 1985 to 28th February 1986.
- e) On completion of maternity leave, reported for duty as Safaiwala with effect from 1st March 1985 and worked upto 31st March 1986.
- f) Again engaged as Assistant Storekeeper (Officiating) for the following period:-
 - i) 01-04-86 to 26-06-86 (4 days break on 27, 28, 29 and 30-06-86)
 - ii) 01-07-86 to 30-08-86 (2 days break on 31-08-06 and 01-09-86)

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- iii) 02-09-86 to 02-11-86 (2 days break on 03 and 04-11-86)
- iv) 05-11-86 to 30-11-86

g) Appointed to the regular post of Assistant Storekeeper with effect from 5th November, 1986.

3. On her regular appointment to the post of Assistant Storekeeper the applicant was granted all the benefits including antedating the increment by condoning 210 days of officiating period as Assistant Storekeeper from 1st April 1986 to 2nd November 1986. (Increment antedated to 10th April 1987 instead of 5th November 1987).

4. The applicant has filed rejoinder in which she stated as under:

The breaks stated in the reply statement are artificial breaks and the applicant is not claiming any undue benefits for the period from 02-08-83 to 23-09-85. The applicant's case is that, based on the pay drawn, she is entitled to get Rs.272/- (revised pay Rs.990) on her reappointment as Assistant Storekeeper w.e.f.01-04-86, but she was given only Rs.950/-, the minimum pay of the scale of Rs.950-1500. By antedating the increment this position has not been changed as she was getting Rs.950/- even otherwise on 01-04-86. That her pay as on 23-09-85 was not protected on 01-04-86 as will be clear from the pay slips of the applicant from the months of 4/86, 11/86, 12/86 10/87, 11/87, 3/88, 4/88, 3/89, 4/89.

5. In the additional reply the respondents have stated as under:

After having remained silent till March 2005 i.e. after a lapse of 17 years, the applicant again approached the respondents in March 2005 (Annexure A3). Admittedly, the applicant filed this O.A. only in July 2006 even after the receipt of a reply (Annexure A4) in June 2005 from the respondents. The time that the applicant took (about 20 years) to approach this Hon'ble Tribunal, as is evident from the O.A., itself proves the devoidness of merit of the case.



6. The Respondents further contended that on implementation of the IV th CPC, it would not have been possible/appropriate to fix the pay of the applicant at Rs.990/- on 1st January 1986 as claimed by her, in view of her holding the regular post of Safaiwala carrying a lower pay scale of (Rs.196-232) at the time of implementation of IV th CPC with effect from 1st January 1986. That is why her pay had to be fixed at Rs.950/- which is the minimum of the scale of pay of Rs.950-1500 granted to Assistant Storekeepers, during the period she officiated after 1st April 1986.

7. **In her additional rejoinder, the applicant has stated as under:**

The applicant is not claiming fixation of pay of Rs.990/- with effect from 1.1.1986. The applicant's case is that the two increments drawn by her in the post of Assistant Storekeeper for her service from 2.8.1983 to 23.9.1985 had to be protected on her reappointment as Storekeeper w.e.f. 1.4.1986. Based on the said pay she was entitled to get Rs.272/- (revised pay Rs.990/-)

8. Counsel for the applicant submitted that the respondents have misunderstood the claim of the applicant. They are under the impression that the claim of the applicant is with reference to the fixation of pay with effect from 1.1.86 under the revised pay rules effective from 1.1.86. According to the counsel the applicant having worked as Assistant Store Keeper and having earned two increments in that post though on ad hoc basis, is entitled to the minimum pay on his regular appointment taking into account the two increments she had earlier earned. According to the counsel, the intermediate breaks are technical in nature and the period of interruption is only marginal. The applicant has relied upon the decision of this Tribunal in O.A. 545/04 (order dated 15.12.06). The applicant

relies upon yet another decision of this Tribunal in O.A. 25/06. Counsel for the respondents submitted that the applicant was working as Safaiwala on 31.3.1986 and her appointment as Assistant Store Keeper from 1.4.86 has been taken into account and waving the period of 210 days, the applicant was given his first increment from April 1987, though her appointment on regular basis as Assistant Store Keeper was w.e.f. November, 1986.

9. Annexure A-1 is the Civilian Establishment (CE for short) list No.88/87 dated 23.10.87 fixing the pay of the applicant at Rs.272/- upto 23.9.85 and thereafter the pay has been fixed from 1.4.86 in the pay scale of Rs.950-1500 and the pay was fixed at Rs.950, with the next date of increment as 10.4.87, taking into account the previous officiation of 210 days in the same stage. Thus, according to the applicant when the period of officiation (210 days) was taken into account which was from 1.4.86, the earlier ad hoc period from 1.9.83 onwards as detailed in para 2 above should have also been taken into consideration. In other words, while the respondents were taking into account only that period of officiation which immediately preceded regularization, the applicant claims the entire period of officiation.

10. Though the Respondents had not raised the issue of limitation in their counter, they had referred to the same in their additional reply. In fact, if merit is in favour of the applicant, the point of limitation being technical need not be given priority over merit. Again in fixation of pay matters, it is settled that limitation does not apply as it is a recurring cause of action.

11. The undisputed fact is that the applicant had served on ad hoc basis for a minimum of two years in the post of Asst. Store Keeper. True, on the date of

regular appointment she was not holding the post of Asst. Store Keeper but was only a regular sweeper. Notwithstanding the same, as the applicant had functioned as Asst. Store Keeper for two years, and she was afforded two increments in the said post despite there being some technical break during the said period of ad hoc appointment, it should be held that she is entitled, at the time of her regular appointment as Asst. Store Keeper, to count the period of past ad hoc service for fixation of pay. Thus, the authorities, which have taken into account the ad hoc period immediately prior to the regular appointment, is in patent error when they refused to take into account the earlier period of ad hoc service. That the applicant was not holding the ad hoc post of Asst. Store Keeper immediately prior to 01-04-1986 would not dis-entitle her to the benefit of past service rendered as Asst. Store Keeper. In this regard, the decision of the Delhi Bench of the Tribunal in the case of Divani Ram vs Union of India (1993) 23 ATC 718 applies. In that case the applicant a regular LDC, was performing duties of Technical Restorer from July 1983 when he proceeded on deputation to a still higher post in August, 1987 and on his repatriation he was posted as LDC in December, 1989. He was thereafter promoted as Technical Restorer on ad hoc basis in December 1989 and on regular basis in April, 1990. It was held that the entire service rendered as Technical Restorer on ad hoc basis including the period of deputation would be taken into account for increments and fixation of pay on the date of promotion on regular basis, notwithstanding the fact that on the date of regular basis the applicant was holding lower post of LDC.

12. In view of the above, the *OA succeeds*. It is declared that the applicant is entitled to protection of her pay in the scale of Rs 260 – 400 (revised scale Rs 950 – 1500) in the post of Assistant Storekeeper drawn by her prior to her proceeding on maternity leave on her appointment to the said post w.e.f. 01-04-1986.

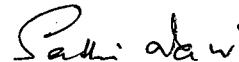


Consequently, her refixation effected w.e.f. 01-04-1986 without taking into account the pay drawn at the time the applicant last served as Assistant storekeeper is illegal. Respondents are directed to fix the pay of the applicant, taking into account the period of service rendered as Asst. Store Keeper prior to the applicant's proceeding on maternity leave, workout the arrears of pay and allowance and pay the arrears to the applicant. Though the applicant has claimed interest @ 12%, as the error committed in fixation of pay was not deliberate, the respondents cannot be saddled with any additional liability of payment of interest. Hence, no interest is payable on the arrears. As the calculation involved dates back to 1986, sufficient time should be allowed to the respondents and hence, time calendared for implementation of this order is six months from the date of communication of this order. No costs.

Dated the2nd day of....January 2008.



Dr.K.B.S.RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN