

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 43 199 0
~~T.A. No.~~

DATE OF DECISION 22.3.91

P. A. Mohammed Ali Applicant (s)

Mr. M. Girijavallabhan Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)
Secretary, Ministry of Defence, New Delhi & others

Mr. C. Kochunni Nair ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S. P. MUKERJI, VICE CHAIRMAN

&

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *hw*
3. Whether their Lordships wish to see the fair copy of the Judgement? *hw*
4. To be circulated to all Benches of the Tribunal? *hw*

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

This application has been filed under section 19 of the Administrative Tribunals' Act, 1985 challenging Annexure-A order dated 3rd November, 1989 passed by the Civil Technical Officer (Mech.) of the Naval Armament Inspectorate, Cochin directing recovery of overpayment made to the applicant due to erroneous fixation of pay on his promotion to the rank of Foreman (Mech.).

2. The applicant was given Selection Grade as Mechanic Examiner w.e.f. 7.1.1981 in the scale of Rs. 550-20-650-25-750 without attaching with it duties and responsibilities of greater importance. Though the applicant was allowed to draw a basic pay of Rs. 650 which was the stage available in the Selection Grade,

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there was no pay fixation under FR 22 C consequent on granting him the Selection Grade. Thereafter, from 18.4.84 the applicant was given regular promotion as Foreman (Mech.) in the same scale of Rs. 550-20-650-25-750. At that time he was drawing a basic pay of Rs. 700/-. But the second respondent by letter No. 110/Corr./Ctv. dated 3.8.84 fixed the pay of the applicant in the promoted post at Rs. 750/- under FR 22 C because the post involved greater duties and responsibilities than the post of Mechanic Examiner (S.G.) The applicant had been drawing the pay thus fixed at Rs. 750/- without any objection from the respondents. Subsequently, under instruction from the second respondent the applicant was served with a copy of the impugned order Annexure-A dated 3.11.1989. According to the applicant this is illegal and violative of the principles of natural justice.

3. The respondents filed a counter affidavit admitting that the applicant was appointed as Mechanic Examiner (S.G.) w.e.f. 7.1.81, but contended that it was not a promotional post. The post of Mechanic Examiner has been redesignated as Senior Chargeman (Mech) as per letter A1/1357 dated 16.7.82. Accordingly, the designation of the applicant was also changed as Senior Chargeman (Mech) Selection Grade. The applicant was drawing a basic pay of Rs. 640 p.m. from 6.1.1982. On his appointment to the Selection Grade, his pay was fixed at Rs. 650/- p.m. which was the next higher stage eligible to him. Later he was promoted to the post of Foreman (Mech) in the pay scale of Rs. 550-20-650-25-750 w.e.f. 18.4.1984. The posts of Senior Chargeman (Mech) (S.G.) and Foreman (Mech) carry identical scale of pay. In the case of promotion from a lower post to higher post in the identical scale of pay, the pay is to be fixed under the

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provisions of FR 22 (a)(ii) and not under FR 22 C. In spite of this rule the pay of the applicant on his promotion to the post of Foreman (Mech) was wrongly fixed under the provisions of FR 22 C w.e.f. 18.4.84 due to oversight. This mistake was found out by the higher authorities and they accordingly, issued orders to re-fix the pay of the applicant as per provisions of FR 22 (a)(ii) w.e.f. 18.4.84 and to recover the excess amount paid to him.

4. The applicant filed a rejoinder and produced Annexure-C memorandum to show that the post of Foreman (Mech) is included among the posts in the Navy carrying higher duties and responsibilities.

5. Having heard the counsel on both sides and after perusing the documents we are of the view that the applicant is entitled to succeed on the ground of violation of principles of natural justice. The respondents have a case that the pay of the applicant on his promotion to the post of Foreman (Mech) was fixed erroneously under FR 22 C in 1984 and they have issued orders to re-fix the same under the provisions of FR 22 (a)(ii) before seeking recovery of the overpayment. Admittedly no notice was given to the applicant before directing re-fixation of the pay of the applicant in the promoted post.

6. The respondents have a further case to support their action and submitted that the Ministry of Finance (Department of Expenditure) by O.M. dated 7.1.1977 created non-functional Selection Grades in the cases of certain Group 'C' and Group 'B' posts to give some reliefs to the officers in order to avoid stagnation. But this non-functional Selection Grades have been abolished on the basis of the recommendation of the IV Pay Commission. This case was also not put to the applicant before seeking

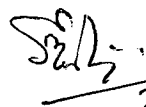
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recovery from his salary. Hence there is violation of principles of natural justice and the action of the respondents is vitiated. The applicant had been drawing the higher pay scale from 18.4.1984 on the basis of the fixation of his pay on his promotion to the post of Foreman (Mech). If as a matter of fact this fixation was found to be made by the respondents due to oversight, they should have issued notice and rectified the mistake, if any, after giving an opportunity of being heard to the applicant. Without giving such an opportunity of being heard to the applicant the respondents straight away issued the impugned order and started recovery from his salary on the basis of the impugned order particularly when the applicant has a forceful contention that the fixation of pay in the promoted post had been made under FR 22 C correctly taking into account the additional duties and responsibilities attached to the post of Foreman (Mech.) as indicated in Annexure-C. This is wrong and illegal.

7. Having regard to the facts and circumstances of the case we are of the view that the impugned order Annexure 'A' is liable to be quashed as violative of principles of natural justice. Accordingly, we quash the same and allow the application. There will be no order as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER

22.3.91.


(S. P. MUKERJI)
VICE CHAIRMAN

22/3/91

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