

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 486 OF 2009

Wednesday, this the 20th day of January, 2010.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

N.R. Shibu,
Overseer Grade I,
National Institute of Fisheries,
Post Harvest Technology & Training,
Cochin-16, residing at 'Nayappallath
House, Elamakkara, Cochin – 682 026.

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Applicant

(By Advocate Mr.Shafik, M.A.)

versus

1. Union of India, rep. by the Secretary,
Department of Animal Husbandry,
Dairying and Fisheries, Ministry of
Agriculture, New Delhi.
2. The Director,
National Institute of Fisheries,
Post Harvest Technology & Training,
Cochin – 16.

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Respondents

(By Advocate Mr. C.M. Nazar, ACGSC)

The application having been heard on 20.01.2010, the Tribunal on the same day delivered the following:

ORDER

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


The applicant, a diploma holder joined the respondent organization as Counter Clerk in 2000 and applied for the post of Overseer Grade I and was so appointed, vide Annexure A-2. Thus, the applicant is functioning at present as Overseer Grade I under the Director, National Institute of Fisheries. The Vth Central Pay Commission had recommended uniformly the pay scale of Rs.5000 – 8000 in respect of those posts which are supervisory in nature and where the minimum qualification is a Diploma. And the same had been



accepted by the Government as well. Annexure A-3 read with Annexure A-4, with particular reference to para 50.23 and 50.24 refer. However, the respondents have prescribed for the post of Overseer Gr. I, the pay scale of Rs.4500 – 7000 only instead of Rs.5000 – 8000. Representation made, vide Annexure A-7 remained unanswered and hence this O.A. has been filed praying for a declaration that the applicant is entitled to the pay scale of Rs.5000 – 8000 and for a direction to the respondents to afford the said pay scale.

2. Respondents have contested the O.A. According to them, earlier, the Ministry of Finance had rejected a case on the grounds that lower alternate qualification of Trade Certificate is prescribed for Electronic Supervisor and in so far as the present case is concerned, the same was taken up with the first respondent in regard to the pay scale of the applicant herein, but no final decision has been given. The case is under active consideration at the Ministry level in consultation with the Ministry of Finance.

3. Counsel for the applicant invited the attention of the Tribunal to Annexure A-5 order dated 30th July 2007 in O.A. No.881/04 wherein on a claim of the Supervisor (Civil) the Ministry of Finance had rejected on the ground of availability of alternate qualification, but the Tribunal held that the supervisor (Civil) are entitled to the pay scale of Rs.5000 – 8000. Again, the same has been duly implemented, vide Annexure A-6 order dated 28-01-2008. And the said post of Supervisor (Civil) and Overseer Grade I had all along been held at par with each other in respect of nature of function (supervisory), qualifications and pay scale. As such, the applicant should be made entitled to the said scale of Rs.5000 – 8000.



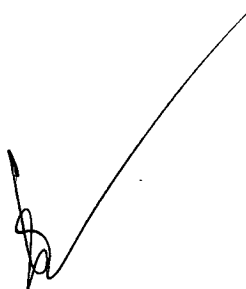
4. Counsel for the respondents did not deny the fact of existence of Annexure A-6 order. Nor was there any rebuttal to the statement of the counsel for the applicant that in matters of functional responsibilities, the post of Overseer Gr. I is comparable with that of Supervisor (Civil).

5. Arguments were heard and documents perused. The Tribunal considered the case in OA No. 881 of 2004 and has held as under:

ORDER

The applicant was initially appointed as Supervisor (Civil) on 13.8.1993 by direct recruitment. At that time the scale of pay of Supervisor was Rs.1400-2300. The 5th Pay Commission had recommended the scale of pay of Rs.1600-2660 to the Diploma Engineers in the scale of pay of Rs.1400-2300 which would be clear from paras 50.23 and 50.24 of the Report of the 5th Pay Commission. The Government of India had accepted the recommendations and granted the revised scale of pay of Rs.5000-8000 to the Diploma Engineers in the Subordinate Engineering cadres. The case of the applicant is that he is entitled to get the scale of pay of Rs.5000-8000 but was granted only the scale of pay of Rs.4500-7000. He had given several representations in this regard and by Annexure A-11 order he has been informed that Ministry of Finance has not agreed to the proposal of the revision of his pay scale for the post of Supervisor (Civil) in IFP, Cochin. But no reason had been given for such rejection. The applicant has further submitted that under the Integrated Fisheries Project itself where he is working, the revised pay scale of Rs.5000-8000 has been granted to the Processing Assistants, Marketing Assistants, Scientific Assistants, Head Clerks etc. who had also like him been given the pay scale of Rs.4500-7000. Hence the applicant has filed this application seeking the following reliefs :-

1. To call for the records leading to Annexure A-11 and set aside the same.
2. To declare that non granting of the pay scale of Rs.5000-8000 to Supervisor (Civil) with effect from 1.1.1996 is illegal.



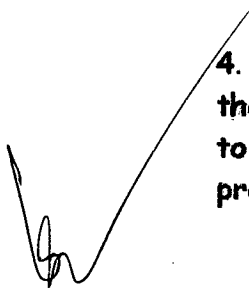
3. To declare that the applicant is entitled to get the pay scale of Rs.5000-8000 to the post of Supervisor (Civil) with effect from 1.1.1996 to the date of promotion to the post of Assistant Engineer (Works).

4. To direct the respondents to pay the arrears in difference in pay to the applicant with 12% interest.


2. Per contra, the respondents have submitted that the representation of the applicant had been supported and forwarded to the 1st respondent who has taken up the matter with the Ministry of Finance and they have not agreed to the proposal in view of the lower alternate qualification instead of Diploma prescribed in the Recruitment Rules for these posts. The applicant had once again submitted a representation and this representation had also been forwarded to the 1st respondent informing that as per the Recruitment Rules the lower alternate qualification instead of Diploma in the relevant Engineering field has been prescribed only for the post of "Electronic Supervisor" which is a direct recruitment post. But the Ministry of Finance again reiterated the same view that the matter had already been examined. The posts of "Supervisor (Civil)", "Electronic Supervisor" and "Supervisor (Electrical)" are attached to different sections like "Works", "Electronics" and "Electrical" and have different duties and responsibilities. But the competent authority examined the matter taking diploma engineers in IFP as a common category and have not agreed for delinking the case of Supervisor (Civil) from the above for considering the upgradation. Respondents have also submitted the correspondence in Annexure R-1 to Annexure R-6 series to support their contentions that they have taken up the matter favourably with the competent authority.

3. The applicant has filed a rejoinder reiterating the averments and pointing out that the decision is highly discriminatory as the Diploma Engineers in other Departments are getting the said scale of pay.

4. Additional reply statement has been filed by the respondents reaffirming the efforts made by them to convince the competent authority but that their proposal has not been acceded to.



5. We have heard Shri. T.A. Rajan for the applicant and Mrs. Jisha for the respondents. The Pay Commission's recommendations in para 50.23 are quite clear in that the existing scale of Rs.1400-2300 was to be replaced as Rs.1600-2660 for Diploma holding Engineers. This was a general recommendation applicable to all Ministries and Departments which was further made clear in para 50.24 by stating that "these pay scales will apply mutatis-mutandis for diploma engineers in different cadres depending upon the availability of specific existing pay scales. We have also recommended specific pay structure for different engineering cadres." The purpose of the recommendation has also been stated clearly in para 50.23 "We have, as a general rule, decided to improve the initial recruitment pay scale of diploma engineers in government." The orders in Annexure A-6 and Annexure A-7 also go to show that these recommendations were implemented in Ministry of Defence and in the CPWD. The only reason furnished for not granting the pay scale to the diploma engineers in IFP is that the Ministry of Finance has considered that the lower alternate qualification has been prescribed in the Recruitment Rules for the post of "Electronic Supervisor". The IFP has repeatedly brought to the notice of the Ministry that the post of Electronic Supervisor is distinct, different and independent of the post of Supervisor (Civil) and Supervisor (Electrical) and that the functions and duties and responsibilities are totally different. The posts of Supervisor (Civil) and Supervisor (Electrical) are promotion posts and the diploma in Civil Engineering/Electrical Engineering was an essential qualification for promotion to these posts. The fact that the lower alternate qualification like trade certificate is prescribed for the post of Electronic Supervisor which is an altogether different post is not a justification to deny the scale of pay to the post of Supervisor (Civil) and Supervisor (Electrical). We are in agreement with these contentions of the applicant which is also supported by his Department. We find that the Ministry of Finance's refusal to consider these aspects in the correct perspective is arbitrary and discriminatory though the facts had been brought to their notice repeatedly. We are, therefore, of the considered view that the applicant's prayer has to be granted. We, therefore, declare that the applicant is entitled to get the pay scale of Rs.5000-8000 with effect from 1.1.1996 and he shall also be entitled to



the consequential benefits of arrears on account of difference in pay. The respondents shall make available the monetary benefits to the applicant within a period of three months from the date of receipt of a copy of this order. The O.A is allowed. No order as to costs."

6. The case of the applicant is identical to the above case, save that the post is Overseer Grade I, but as stated by the applicant, the two posts are comparable and the recommendation of the Pay Commission that pay scale of Rs.5000 – 8000 for those posts where the minimum qualification prescribed is Diploma is equally applicable to this case as well.

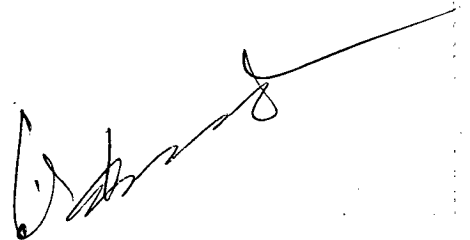
7. In view of the above, it is declared that the applicant is entitled to get the pay scale of Rs.5000-8000 with effect from 1.1.1996 and he shall also be entitled to the consequential benefits of arrears on account of difference in pay. The respondents shall make available the monetary benefits to the applicant within a period of three months from the date of receipt of a copy of this order. The O.A is allowed. No order as to costs.

(Dated, the 20th January, 2010.)



K.NOORJEHAN
ADMINISTRATIVE MEMBER

rkr



Dr.K.B.S.RAJAN
JUDICIAL MEMBER