

**CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH**

Application Nos. OA 51/1987 & 52/1987

Smt. Annamma Baby : Applicant in OA 51/1987

Versus

- | | | |
|----------------------------------|---|----------------|
| 1. Union of India represented by | X | |
| the Secretary, Ministry of | X | |
| Defence, New Delhi. | X | |
| | X | Respondents in |
| 2. Flag Officer Commanding-in- | X | OA 51/1987 |
| Chief, Headquarters, Southern | X | |
| Naval Command, Cochin. | X | |
| 3. Senior Naval Store Officer, | X | |
| Cochin. | X | |

Shri M. Girijavallabhan : Counsel for applicant in
OA 51/1987

Shri P.V. Madhavan Nambiar, : Counsel for respondents
SCGSC in OA 51/1987

Smt. A.J. Tressa : Applicants in OA 52/1987

Smt. Grace T. Rozario

Versus

- | | | |
|-------------------------------|---|-------------------|
| 1. Union of India represented | X | |
| by the Secretary, Ministry | X | |
| of Defence, New Delhi. | X | |
| | X | Respondents in OA |
| 2. Flag Officer Commanding- | X | 52/1987 |
| in-Chief, Headquarters, | X | |
| Southern Naval Command, | X | |
| Cochin. | X | |
| 3. Accounts Officer, Area | X | |
| Accounts Office, CDA(N), | X | |
| Cochin. | X | |

Shri M. Girijavallabhan : Counsel for applicants
in OA 52/1987

Shri K. Karthikeya Panicker, : Counsel for respondents
ACGSC in OA 52/1987

CORAM:

Hon'ble Shri G. Sreedharan Nair, Judicial Member.

ORDER

The applicant in OA 51/1987 and the two applicants in OA 52/1987 are Upper Division Clerks attached to the Headquarters, Southern Naval Command. It was after 19 years of service as Lower Division Clerks that they were promoted as Upper Division Clerks with effect from 24-4-1981 as per the order dated 8-6-1981 issued by the second respondent. They were able to obtain the promotion as a result of the reduction of the ratio as between UDCs and LDCs from 4:8 to 4:6 as ordered by the first respondent by his O.M. dated 27-2-1981 (Ext. A1). The applicants had no grievance with respect to the fixation of their pay on promotion as UDCs with effect from 24-4-1981 as their dates of increment in the lower scale of LDC fell on 23-4-1981 and on its basis their basic pay was fixed at Rs 404/- p.m. with effect from 24-4-1981. They had been drawing basic pay of Rs 390/- p.m. as LDCs. The applicants have filed these applications as they were aggrieved by the subsequent O.M. dated 13-10-1981 (Ext. A-2) under which their promotion has been made effective from 27-2-1981, the date of the O.M. by which the revised ratio as between UDCs and LDCs was effected. It is alleged that it was without obtaining any

consent or option from them, or giving notice regarding the antedating of their promotion with effect from the date the Ext. A2 O.M. was issued. On the basis of the said O.M. the pay of the applicants was reduced and refixed at Rs 382/- as on 27-2-1981. Since the action of the respondent has resulted in the reduction of pay of the applicants they pray that it be declared illegal and that they be allowed the pay originally fixed on the strength of Ext. A1 O.M.

2. In the reply the respondents contend that the question was taken up with higher authorities for consideration, and as the provision relating to exercise of option by the promotees came into effect only on the 1st May, 1981 the applicants are not entitled to its benefits. As the refixation of pay has been done in accordance with the orders issued by the competent authority it is not open to challenge.

3. On hearing counsel on either side and on examining the records I am of the view that the applicants are to succeed.

4. The O.M. dated 27-2-1981 (Ext. A1) was issued by the Government of India with a view to confer benefit on the employees working in the cadre of Lower Division Clerks for years together. By that O.M. the ratio between the UDCs and LDCs was revised

from 4:8 to 4:6. The applicants had been working as Lower Division Clerks for a period of 19 years.

In view of Ext A1 O.M. the applicants were promoted with effect from 24-4-1981 and as a result thereof as against the basic pay of Rs 390 p.m. which they were drawing as LDCs their basic pay was fixed at Rs 404 p.m. with effect from the date of such promotion. But on the basis of the subsequent O.M. at Ext. A2 which provides that the promotion of LDCs under the revised ratio would be made effective from 27-2-1981 irrespective of the date of assumption of charge, a refixation of the pay of these applicants has been made to their disadvantage, as their basic pay on promotion as UDCs has been fixed at Rs 382 only with effect from 27-2-1981. When the O.M. at Ext. A1 was issued so as to provide a benefit to those employees who were working in the cadre of Lower Division Clerks it cannot be that by promoting them to the cadre of Upper Division Clerks a reduction in their basic pay was contemplated. At any rate if it results in such a reduction it is a clear anomaly and requires rectification in the interest of justice. In these cases by fixing the basic pay of the applicants at Rs 404 p.m. with effect from 24-4-1981, by allowing them to continue in the scale

of pay ~~as~~ Lower Division Clerks till then so that they get the benefit of the ^{accrual} ~~accruing~~ of an increment, the fixation was done properly and fairly. It was thereafter that relying on the O.M. dated 13-10-1981 (Ext. A2) that this was ~~made~~ modified and their pay was refixed on promotion to Rs 382, by antedating the promotion to 27-2-1981. This was done ^{unilaterally} without calling for any option from the applicants or issuing notice to them.

5. It is clear from the correspondence which has been produced by the respondents that in those cases where there is a drop in the pay on account of the application of ^{Ex.} A2 O.M. it was decided to be granted as personal pay with the condition that it should be absorbed in future increments. The O.M. dated 26-9-1981 issued by the Department of Personnel and Administrative Reforms (R-2(g)) provides that if there is scope for such an anomaly in the matter of fixation of pay on promotion, the employee is to be given an option. However on the ground that the O.M. is operative only from 1st May, 1981 it has not been made available in the case of these applicants. When once the respondents are satisfied regarding the existence of the anomaly in the matter of fixation of pay of these applicants on promotion from the cadre of IDCs to that of UDCs the respondents are bound in law to rectify the anomaly so that

prejudice is not caused to the applicants as a result of the promotion granted to them.

In the result the orders of respondents 1 and 2 for refixation of the pay of these applicants on their promotion to the cadre of U.D.C. are hereby quashed. These applicants shall be paid the pay as originally fixed. Amounts if any recovered from them on the strength of the refixation shall be repaid to them within a month of the receipt of a copy of this order.

These applications are allowed as above.


(G. Sreedharan Nair)
Judicial Member

Index: Yes/No