

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 516 OF 2006

Dated the 26th June..., 2008

CORAM:

HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE DR. K.S.SUGATHAN, ADMINISTRATIVE MEMBER

1. K. Bhaskaran, aged 42 years,
S/o K Kutty, Chargeman I,
Naval Ship Repair Yard,
Kochi-4, residing at Pempila,
Vettil House, Udayanagar,
Kureekadu, Ernakulam.
2. TK Gokuldas, aged 54 years,
S/o Ayyappan, Chargeman I,
NSRY, Naval Base, Kochi-4,
residing at Chirammelparambil,
Gokulam, Elankunnapuzhya PO,
Kochi-682 508.
3. ME Uthama Kurup, aged 47 years,
S/o T P Parameswaran Nair, Chargeman I,
ATS, NSRY, Naval Base, Kochi-4,
residing at Rohitas, Perumthuruth, Kalavoor PO,
Alleppey- 688 522.
4. T.I Wilson, aged 53 years,
S/o TC Iyyakku, Chargeman-I,
Welding Shop, NSRY, Naval Base,
Kochi-4, residing at 44/1708,
Barook Nivas, Desabhimani main Road,
Kairaly Street 75, Kaloore, Kochi-17.
5. CJ Paulose, aged 46 years,
S/o Varkey Joseph, Assistant Foreman,
(ICE), KE Shop, NSRY, Naval Base, Kochi-4,
Residing at Choothukalayil House,
Pambakuda PO, Muvattupuzha, Ernakulam Dist.
6. K. Mohanakumar, aged 48 years,
S/o N Kumaran Nair (late) Chargeman-II,
NSRY, Naval Base, Kochi-4, residing at PWD
Quarters, Type-III A.5., Palluruthy,
Kochi-682 006.
7. PK Venugopal, aged 46 years,
s/o PK Krishnan Nair, Charge Man-I
NSRY, Naval Base, Kochi-4, residing
At Puthumadathil, South Chittoor, Kochi-27.
8. VA Rajan, aged 53 years,
s/o K Achuthan Pillai, Asstt. Foreman, ICE Shop,
NSRY, Naval Base, Kochi-4, residing at
Kausthubham, Kizhakepram, N Paravur,
Ernakulam Dist. 683 513.

9. M. Vijayan, aged 50 years,
S/o late C Achuthan Nair, Chargeman-I(Power),
Electroplating Shop, NSRY, Kochi-4,
Residing at Ushus, Thurutheparambu Road,
Vazhakkala, Thaiklkakara PO, Kochi-21.
10. PV Gangadharan, S/o PA Velayudhan, Chargeman-I
NSRY, Naval Base, Kochi-4, residing at Peechanath,
18/2368 D Pary Junction, Thoppumpady.
11. CS Gokulan, s/o late CMSankunyt, Chargeman I Nsry,
Naval Base, Kochi-4, residing at Chakkala Parambil House,
Kumbalam PO, Ernakulam Dist.
12. MK Asokan, c/o MK Kandan, Charge Man-I,
WOT Cochin Shipyard, Kochi, residing at
Muthukuttiyl Panangad, Kochi-682 506.
13. K. Krishnan Kutty, S/o A Kaliyan (late),
Chargeman-II, Ship fitting Shopp, C.75, NSRY.
Naval Base, Kochi-4, residing at vellani House,
Nazarath Angadi, Nellikkunnu Po, Thrissur-5.
14. R. Jyothi, s/o S Ramachandran, Chargeman-I,
NSRY, Naval Base, Kochi-4, residing at Jyothi
Bhavan, Maruthankuzhi, Kanjirampara PO,
Thiruvananthapuram.
15. E. Joseph Samuel, s/o E Samuel, Chargeman-II,
NSRY, Naval Base, Kochi-4, residing at Elamplackel House,
Ambedkar Road, Vennala PO, Ernakulam.
16. M Asoka Panicker, S/o Madhava Panicker, Chargeman-I,
NSRY, Naval Base, Kochi-4, residing at Aswathy, No.43/
228A, Nehru Road, 1st cross End, Ayyappankavu, Kochi-18.
17. K Sasi, s/o K Kandru, Chargeman-1(Mechanic),
NSRY, Naval Base, Kochi-4, residing at Sabhalliyam,
Adivaram, Nochima, N.A.D. P.O, Aluva.
18. KKSivadasan S/o Kannan, Chargeman-I,
NSRY, Naval Base, Kochi-4, residing at
Kareeparambil House, Mannani PO, N Paroor,
Ernakulam Dist.
19. S Mohana Chandran, s/o KR Sreedharan Pillai,
Chargeman-II, NSRY, Naval Base, Kochi-4,
Residing at Anjilikkattu House,
Maruthoorvattom, Chrthala, Alappuzha.
20. Mukundan CK, s/o CK Krishnan, Chargeman-I,
NSRY, Naval Base, Kochi-4, residing at Cheriyaath House,
Nedumbassery PO, Ernakulam Dist.
21. AC Samuel, S/o AS Chako, Chargeman-II,
NSRY, Naval Base, Kochi-4
22. PP Ravindran, s/o PN Pappu, Chargeman-I,
Workshop Overseeing Man, Cochin Shipyard Ltd.,
Kochi, residing at Poonthodath House, Vayal Varam House,
Udayamperoor PO, Ernakulam.
23. SA Rajan, s/o Appukuttan, Chargeman-I,
NSRY, Naval Base, Kochi-4, residing at
Aiswarya No.19/557-B, Waterlevel Road, Palluruthy, Kochi-5.

Applicants

[By Advocate: MR TCG Swami, and Ms Rajitha]

-Versus-

1. Union of India,
Represented by the Secretary to the
Govt. of India, Ministry of Defence, New Delhi.
2. The Chief of the Naval Staff,
Naval Headquarters,
Ministry of Defence, New Delhi.
3. The Flag Officer Commanding-in-Chief,
Headquarters, Southern Naval Command,
Naval Base, Cochin-4.
4. Secretary to the Government of India,
Ministry of Finance (Department of
Expenditure), New Delhi.

..Respondents

[By Advocate : Mr TPM Ibrahim Khan, SCGSC & Ms. Jisha]

This application having been heard finally on 28th May, 2008, the Tribunal delivered the following: -

ORDER

[Hon'ble Dr.KS Sugathan, AM]

There are 23 applicants in this OA. They are presently working in the Technical Supervisory cadre of the Naval Ship Repair Yard (NSRY), Kochi. They are aggrieved by the alleged discrimination in the grant of scales of pay to the erstwhile Sr. Chargemen of the Naval Ship Repair Yard vis-à-vis their counterparts in the other Naval organisations. The Government of India accepted the various recommendations of the Vth Pay Commission and conveyed its decision in the form of the Defence Service (Revised Pay Rules) 1997 vide Notification dated 9.10.1997. As per the said notification, the Senior Chargeman of NSRY who were in the pay scale of Rs.1400-2300 were given the replacement pay scale of Rs.5000-8000. Whereas the Senior Chargeman in the Naval Armament Workshop in the Naval Armament Supply Organisation (NASO) who were also in the pay scale of Rs.1400-2300 are given the replacement scale of 5500-9000. It is the contention of the applicants that the skill required and the nature of duties in the NSRY are identical to the skill required and nature duties of the Senior Chargeman working in the NASO, and therefore they are entitled to get the pay scale of



Rs.5500-9000 with effect from 1.1.1996 or from the dates they became Senior Chargeman. The applicants have referred to the orders passed by this Tribunal in OA180/2001 which has been subsequently upheld by the Hon'ble High Court of Kerala. They have also referred to the orders of the Mumbai Bench of the Tribunal in OA 587/2000 and OA 667/2000.

2] The respondents have contested the OA. It is contended on their behalf that the structure of Technical supervisory staff in the Dockyard/Factory is different from Armament Work Shop (AWS). The entry qualification for Senior Chargeman (AWS) is Degree in Physics and Chemistry whereas it is only a Diploma in Engineering with 1 year experience or matriculates with three year experience in NSRY. The nature of duties are also different. The perceived anomaly in the pay scales given to Sr. Chargeman in AWS under NASO vis-à-vis the pay scale for Sr. Chargeman in the other naval establishments was referred to the Departmental Anomalies Committee. The Departmental Anomalies Committee had observed that the 5th Pay Commission had recommended the revised scale of Rs.5500-9000 to Sr.Chargeman of AWS under NASO on the assumption that the grade of Chargeman in the pre-revised scale of Rs.1400-2300 also existed along with that of Sr.Chargeman. The higher pay scale given to Sr.Chargeman of NASO was on account of a mistake in identity. The Anomalies Committee had therefore recommended reduction in the pay scale of Sr.Chargeman in NASO. This recommendation was accepted and the pay scale applicable to Sr.Chargeman was reduced to the level of the Sr.Chargeman in other Naval Organisations. The decision to reduce the higher pay scale in NASO was challenged by affected employees of NASO through OA180/2001. The Tribunal allowed the OA. Against the decision of the Tribunal the respondents have filed a WP in the Hon'ble High Court. The Sr.Chargeman were earlier in the pay scale of Rs.1400-2300 for which equivalent pay scale recommended by the 5th Pay Commission was Rs.4500-7000.



But they have been given a pay scale of Rs.5000-8000 which is a higher scale. The revised four-tier structure has brought better promotional prospects to the technical supervisory cadre. They have therefore sought dismissal of the OA.

3] We have heard the learned counsel for the applicants Shri TCG Swamy and the learned counsel for the respondents Shri TPM Ibrahim Khan. We have also perused the documents carefully.

4] The issue for consideration in this OA is whether the applicants are entitled to the pay scale of Rs.5500-9000 as against the scale of Rs.5000-8000 granted to them by the Vth Pay Commission. The applicants have argued that the nature of their duties are identical with those of the Sr.Chargeman of NASO, which is a sister organisation of the Naval establishment. Before the Vth Pay Commission recommendations, their pay scales were also identical, namely 1400-2300. Therefore, they are also entitled to the revised pay scale of Rs.5500-9000. The applicants have referred to the decision of this Tribunal in OA180/2001. In that OA the Sr.Chargeman of NASO challenged the reduction of their pay scale from 5500-9000 to 5000-8000 to rectify the anomaly. In OA812/98, the Chargeman working under the NAIO had sought the pay scale of Rs.5500-9000 on par with the pay scale given to Chargeman of NASO. This Tribunal directed the respondents to consider the representations of the applicants in OA812/98 by placing the matter before the Anomalies Committee. But instead of the bringing the applicants of OA812/98 on par with the Chargeman of NASO, the respondents reduced the pay scale of NASO on the basis of the recommendations of the Anomalies Committee. That decision led to OA/180/2001 filed by the Chargeman of NASO. The prayer of the applicants in OA180/2001 was upheld by the Tribunal. While allowing the prayer in OA180/2001 this Tribunal had observed:

“ In our view, therefore, the theory of mistake in identity allegedly committed by the Vth Pay Commission has no basis. We are inclined to

agree with the applicants' contention in this regard that the Vth Pay Commission has considered the factual position particularly with reference to the nature of work, duties and responsibilities of Technical Supervisory Staff in AWS under NASO and those in the Inspection Organisation under NAIO. In this connection, we take note of the fact that Naval Headquarters letter dated 2.6.98 is communicated as per endorsement dated 23.6.98 (A-9) probably a few days after this Tribunal passed the order in OA 812/98 dated 17.6.98/ This is only to show that the respondents' own perception as to the nature of the alleged anomaly raised by the applicants in OA BNo.812/98 is clearly reflected in communication dated 2.6.98 which constitutes the substance of A-9 communication. Suffice it to say, the respondents have justified the Vth Pay Commission's recommendations since accepted and implemented. The theory of mistake in identity therefore deserves to be rejected. As has already been observed, A-10 notification dated 30.9.97 formulated in exercise of the powers conferred on the President, contains the rules governing the grant of revised scales in terms of the recommendations of the Vth Pay Commission accepted by the Government of India and under these rules, the Senior Chargeman in the AWS at the relevant point of time drawing the pay scale of Rs. 1400-2300 would be eligible for Rs. 5500-9000 and Chargeman in the same organisation i.e. NASO placed in the same scale of Rs.1400-2300 would get revised the scale of Rs. 5000-9000. Under the very same rules, the Senior Chargeman and Chargeman in the NAIO who were having the scale of Rs.1400-2300 would be getting the revised scale of Rs. 5000-8000 and this rule cannot be nullified or substituted by the impugned orders."

The decision of this Tribunal in OA180/2001 was challenged by the respondents in WP No.30853 of 2003. The Hon'ble High Court has recently on 31st January 2008 dismissed the WP. While dismissing the WP the Hon'ble High Court has observed that:

"6. We are not persuaded to differ from the reasoning adopted by the Tribunal. In fact, the pay scales have been revised and relevant notifications have been issued under the rules framed under Article 309 of the Constitution and the respondents have enjoyed the said benefit for more than 4 ½ years. There was no anomaly as far as the fixation of their pay is concerned. Therefore, the reduction by way of executive orders is wholly unjustifiable and the Tribunal was absolutely right in setting aside the impugned orders."

5] The applicants have also referred to the orders of the Mumbai Bench of the Tribunal on OA No.587/2000 and 667/2000 which were disposed of by the Tribunal with the observation that "in case the Hon'ble High Court of Kerala gives a decision in favour of similarly placed employees in the said writ petition filed by the UOI, the applicants in both the present OAs can move the respondents to give benefit for the applicants on similar lines". The Mumbai Bench had not gone into the merits of the case. Therefore we have to see whether the judgment of the Hon'ble

High Court of Kerala is directly applicable to the applicants of this OA. The matter involved in the WP before the Hon'ble High Court was the reduction of the pay scale of the Sr.Chargeman of the NASO organisation. This Tribunal as well as the Hon'ble High Court had held that such a reduction in the pay scale which was recommended by the Pay Commission and notified under Article 309 was totally unjustified. The issue in the present OA is the prayer for enhancement of the pay scale on par with the Sr.Chargeman of the NASO. This is not case where the pay scale granted earlier by the Government by a notification has been reduced by the respondents. In that view of the matter the judgment of the Hon'ble High Court is not directly applicable to the applicants of this OA.

6] Coming to the issue of parity claimed by the applicants in this OA, it is to be noted that the issue of parity in pay scales has to be necessarily decided by an expert body. The 5th Pay Commission was such an expert body. The recommendations of the 5th Pay Commission were accepted and notified by the Government on 9th October 1997. The existing and the revised pay scales of Technical Supervisors in the Navy are contained in page 25 of the said Notification. The relevant portions are reproduced below:

"TECHNICAL SUPERVISORS

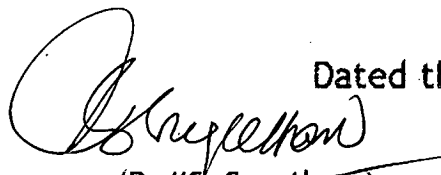
39.	Foreman in Naval Dockyards / Ships Repair Yards	1600-50-2300 -60-2660	5500-175-9000 6500-200-10500	63.302
40.	Sr.Chargeman in Naval Dockyards / Ship Repair Yards	1400-40-1800-50-2300	5000-150-8000	63.302
41.	Sr. Foreman in Naval Ammunition Workshop under NASO	2000-60-2300 -75-3200	745-225-11500	63.302
42.	Foreman in Naval Ammunition Workshop under NASO	1640-6-2600 -75-2900	6500-200-10500	63.302
43.	Sr.Chargeman in Naval Ammunition workshop under NASO	1400-40-1800 -50-2300	5500-175-9000	63.302

44. Chargeman in Naval Ammunition Workshop under NASO	1400-40-1800 -50-2300	5000-150-8000	63.302
45. Foreman in NAO Ammunition workshop and Foreman in NAO Factory Workshop(Mech)	1600-50-2300 -60-2660	5500-175-9000 6500-200-10500	63.302
46. Sr. Chargeman & chargeman in Ammunition Workshop in NAO Factory Workshop (Mech) and Sr. Chargeman in NAO Factory Workshop (Mech)	1400-40-1800 -50-2300	5000-150-8000	63.302
47. Ammunition Mechanic	950-2-1750 -25-1500	4000-100-6000	63.317

7] It is clear from the above extract (serial No.40) that Sr. Chargeman in Naval Ship repair Yards (such as the applicants) who were in the pay scale of Rs.1400-2300 are given the revised pay scale of Rs.5000-8000 whereas the Sr.Chargeman in the NASO (serial No.43) who were also in the pay scale of Rs.1400-2300 were given the revised pay scale of Rs.5500-9000. That such a differentiation is not an oversight or mistake in identify was upheld by this Tribunal as well as by the Hon'ble High Court. In case of anomalies arising out of the recommendations of the Pay Commission recommendations, it is upto the Government to examine them on merit and take a decision. The representations made by the applicants have been considered by the respondents and a reply has been given. This Tribunal cannot get into the role of a Pay Commission or any expert body to determine what posts should be equated and what should be the appropriate pay scales for various posts. Mere similarity in nomenclature of posts cannot ipso facto be considered as a valid ground for concluding that the posts carry the same functions. If an expert body does something illegal or arbitrary, the Tribunal can step in. That is what this Tribunal did when it allowed the prayer of the applicants in OA180/2001 whose pay scales were reduced arbitrarily. But in the present OA what the applicants are asking is an enhancement of

pay scale on the ground of parity. Since no arbitrariness or illegality is seen in the Notification issued by the respondents on 9.10.1997 it is not possible for this Tribunal to grant such a prayer.

8] For the reasons stated above, we do not see any merit in the OA. The OA is therefore dismissed. No costs.


(Dr. KS. Sugathan)
Administrative Member

Dated the 26th June, 2008


(George Parackal)
Judicial Member

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