

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 560/2003

MONDAY THIS THE 20th DAY OF FEBRUARY, 2006

CORAM

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

A.G. Rajasekharan Nair
Ex MT Supervisor
Kanagank Nilayam
South Chittoor P.O.
Kochi-682 027

..Applicant

By Advocate Mr. Manu Mohan

Vs

- 1 The Flag Officer Commanding-in-Chief
 Southern Naval Command for CSO P&A
 Kochi-682 004
- 2 Union of India represented by the
 Secretary to Government
 Ministry of Defence
 New Delhi.

Respondents.

By Advocate Mr. TPM Ibrahim Khan, SCGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant is a retired Motor Transport Supervisor(MT Supervisor) in the Naval Department and is aggrieved by the rejection of his request for a higher pay scale by the first respondent. The applicant joined service in 1966 as a Motor Transport Driver which post was re-designated as Civilian Motor Driver. On passing the trade test he was promoted to the post of MT Supervisor. He was transferred in the scale of pay of Rs. 4000-6000 to INS Venduruthy in a superannuation vacancy on 26.12.1997 by Annexure A2 order. He was subsequently promoted as Chief Motor Driver (Special

Grade) w.e.f. 8.11.96 by Annexure A-3 order dated 25.1.02 in the scale of pay of Rs. 5000-8000. He retired on 30.1.2002 on superannuation. After retirement he preferred a detailed representation to the first respondent stating that the scale of pay of the new grade of Chief Motor Driver (SG) and that of MT Supervisor has become the same and therefore it was necessary to have a separate pay scale for MT Supervisor. His request was rejected by the first respondent against which the applicant has now filed this OA. The applicant bases his claim on the ground that promotion not only covers advance to a higher position, grade or rank but also implies advancement to a higher grade. The post of MT Supervisor is vested with more responsibilities than that of Civilian Motor Driver (SG). The introduction of this new post of Civilian Motor Driver (Special Grade) in the pay scale of Rs. 5000-8000 creates an anomalous situation whereby juniors draw pay on par with their seniors who were in the promotion post of MT Supervisor. It is also his contention that the impugned order does not deal with any of the contentions raised by him and it has been issued without application of mind. He claims the following reliefs:

(i) Set aside Annexure A5 letter No. 2752/2 dated 12.9.2002 as the same is unsustainable and illegal.

(ii) Declare that the applicant is entitled to a higher pay scale for the post of MT Supervisor of Rs. 5500-175-9000 with effect from 9.1.1998.

(iii) Issue a direction to the respondents 1 and 2 to disburse the arrears of salary in the pay scale of Rs. 5500-175-99000 w.e.f. 9.1.98 viz. the date on which the applicant assumed charge as MT Supervisor.

(iv) Grant such other relief as may be prayed for and the Tribunal may deem fit to grant, and

(v) Grant the costs of this Original Application

2 The respondents have denied the averments of the applicant in the reply statement. It is submitted that the Government have restructured the

cadre of MT Supervisor with a higher pay scale of Rs. 5000-8000 as per the recommendations of the Vth CPC and the orders were issued implementing the same with immediate effect. The applicant had then filed OA 1077/99 before this Tribunal praying for a direction to declare that he was entitled to get revised pay scale w.e.f. 1.1.1986. While the OA was pending the reliefs sought for was granted consequently the Tribunal dismissed the OA as infructuous. The applicant has deliberately hidden the fact in this OA and after having received the benefit of revision has filed this OA after six months of his retirement praying for higher pay scale, and therefore the OA is not maintainable.

3 On the facts it is submitted that the applicant was promoted to the grade of MT Driver Grade-I w.e.f. 26.6.79 and to MT Driver Selection Grade on 1.6.89. In 1996 the cadre was restructured and MT Drivers were re-designated as Civilian Motor Driver Ordinary Grade, Grade-II and Grade-I and the applicant was designated as Civilian Motor Driver Grade-I. He was further promoted to the post of Motor Transport Driver in the scale of Rs. 4000-6000. w.e.f. 9.11.1988. The Government of India vide letter dated 9.4.2001 introduced a post of Civilian Motor Driver Special Grade constituting 5% of the total strength of Transport Driver Grades in the scale of pay of Rs. 5000-8000 w.e.f. 8th November, 1996. The applicant was promoted to this grade retrospectively from that date. That means the applicant was allowed the benefit of the higher pay scale retrospectively even though his designation changed from Motor Transport Supervisor to Civilian Motor Driver (Selection Grade). The promotional avenues for these grades are as under:




Old hierarchy	Revised Structure	
Foreman of Transport	Foreman of Transport	
Head Motor Transport Supervisor	Motor Transport Supervisor (Rs. 5000-8000)	Civilian Motor Driver (Special Grade) (Rs. 5000-8000)
Motor Transport Supervisor		
Motor Transport driver (Selection Grade)	Civilian Motor Driver Grade-I	
Motor Transport Driver Grade-I	Civilian Motor Driver Grade-II	
Motor transport Driver Grade-II	Civilian Motor Driver (Ordinary Grade)	

3 It clearly shows that the post of Civilian Motor Driver Selection Grade was created to alleviate the stagnation in the cadre of Motor Transport Drivers and not to be equated with the post of Motor Transport Supervisor even though both the posts carry the same scale of pay. The benefit accrued to the applicant was rightly given to him and thereby no rights of the applicant have been violated. The applicant has not produced any specific instance of any of the juniors drawing more pay than him. By creating the post of Civilian Supervisor (Selection Grade) in the same scale of pay does not mean that the status of the post is down graded. The respondents have further averred that the provision of higher scale of pay to a post, etc. are based on the recommendations of the expert committees on service matters like the Pay Commission, etc. and no injustice has been done to the applicant as averred and hence the OA. may be dismissed.

4 No rejoinder has been filed by the applicant.

5 We have heard the learned counsel for both sides. The only

question arising for our consideration in this OA is whether the request of the applicant for higher pay scale is based on any legal right and whether the applicant has been denied any benefits rightly due to him. It is clear from the averments in the reply statement of the respondents and the hierachial structure that the promotion avenue for Civilian Motor Drivers Grade-I is to the grade of Motor Transport Supervisor as well as to the grade of Civilian Motor Drivers Selection Grade both of which carry the same pay scale of Rs. 5000-8000. The applicant was promoted according to the hierarchy in 1988 to the post of Motor Driver Supervisor. The post of Civilian Motor Driver Selection Grade was created only in 2000 that too for 5% of the total strength w.e.f. 8.11.1996 to avoid stagnation and the applicant was also allowed this benefit retrospectively from the date of creation of that post. The dirrect promotional hierarchy from the Civilian Motor Driver Grade-I to the Motor Transport Supervisor remains the same and the creation of the post of Civilian Motor Driver Selection Grade has not altered this position. At present the rules do not provide any promotion from that post to the higher post of Foreman. Whether this should be provided for in the long run or not is for the Department to decide. That is also not the contention of the applicant in this O.A. The plea of the applicant is that because the Selection Grade was created in the same scale the promotion post should carry a higher scale it does not hold any water as the Selection Grade is meant only to alleviate the stagnation and to provide avenue of promotion to Civilian Motor Drivers Grade-I. The pay scales have to be determined on the basis of duties and responsibilities and the hierarchy pertaining to each Department and these are matters which are to be decided as rightly contended by the respondents by expert bodies. The applicant has no legal right to contend that the post he was occupying should have a higher pay scale that too after retirement. The



grounds on which he has raised his case do not have any nexus with the Recruitment Rules or the recommendations of the Vth Central Pay Commission. The applicant has enjoyed the benefits which are accrued to him as per the Recruitment Rules prevailing till the date of his retirement. It is not for the applicant to say the channel of promotion in the Recruitment Rules should have been different or that the pay scales should have been higher. This principle has been well settled by the judgment of the Apex Court in P.U. Joshi and others Vs. AG and others (2003) 2 SCC 632. The Apex Court held as follows:

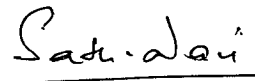
"Determination of conditions of service, alteration thereof by amending rules, constitution, classification or abolition of posts, cadres or categories of service, amalgamation, bifurcation of departments, reconstitution, restructuring of the pattern, etc. all pertain to executive policy and within exclusive discretion of the State, subject to limitations and restriction envisaged in the Constitution- Government Servants have only right to safeguarding rights or benefits already earned, acquired or accrued but they cannot challenge the authority of State to make such amendments or alterations in rules – nor can Tribunal interfere with the exclusive discretionary jurisdiction of the State".

6 The Apex Court also held that review of pay scales and related matters are best left to expert bodies and the Courts/Tribunals cannot sit in judgment over this recommendations of expert bodies like the Pay Commission, etc.

7 In the light of the above judgments and the factual position stated above, we do not find any merit in the prayer of the applicant. The OA is dismissed. No costs.

Dated 20.2.2006


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN