

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.182/02

Thursday this the 25th day of March 2004

C O R A M :

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P.DAS, ADMINISTRATIVE MEMBER

M.Cheriyar Vaidian
S/o.late P.K.Mamman,
Barrack and Stores Officer,
Office of the Garrison Engineer(Air Force),
Pulayanarkotta, Thiruvikkal PO,
Thiruvananthapuram - 31.

Applicant

(By Advocate Mr.O.V.Radhakrishnan)

Versus

1. Officer in Charge,
Central Record Office (Officers),
C/o.The Chief Engineer,
Delhi Zone, Delhi Cantonment,
PIN : 110 010.
2. Engineer in Chief,
Army Headquarters,
Defence Headquarters PO,
New Delhi - 110 011.
3. Chief Engineer,
EIB (O), Southern Command,
Pune - 411 001.
4. Commander Works Engineer (Air Force),
Thiruvananthapuram - 6.
5. Controller General of Defence Accounts,
Delhi Contonment - 110 010.
6. Union of India represented by
its Secretary, Ministry of Defence,
New Delhi.

Respondents

(By Advocate Mr.S.K.Balachandran,ACGSC)


This application having been heard on 25th March 2004 the Tribunal on the same day delivered the following :

O R D E R

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN


When the applicant was working as Supervisor Barracks and Stores in the scale Rs.1400-2600 he was placed in the senior scale with effect from 16.1.1995 in the scale Rs.2000-3200. The

next promotional post was Barrack and Stores Officer. While so, in implementation of the report of the 5th Central Pay Commission the scale of pay of Supervisor Barrack and Stores Grade I (Senior Scale) as also of Barrack and Stores Officer got merged into one scale of Rs.6500-10500. While the applicant was placed in the senior scale of Supervisor Barrack and Stores he was not given the benefit of FR 22(1) (a) (i). He was subsequently promoted as Barrack and Stores Officer with effect from 24.4.1998 by Annexure A-6 order. The department recommended the fixation of his pay as Barrack and Stores Officer invoking the provision of FR 22 (1) (a) (i) referring to an instance of fixation of pay in a similar case of V.C.Thanu Pillai (Annexure A-19). However this was not acceded to by Headquarters. Therefore the applicant has filed this application for a declaration that the applicant was holding the post of Supervisor Barrack and Stores Grade I in the scale of Rs.1400-2600 on regular basis at the time of his promotion as BSO/BSO Grade II was eligible and entitled to have his pay fixed on his promotion as BSO/BSO Grade II which carries duties and responsibilities of greater importance than those attaching to the post held by him on regular basis at the time of his promotion as BSO/BSO Grade II on regular basis applying FR 22 (1) (a) (i) and to get all consequential monetary benefits and for a direction to the respondents to grant him the said benefits. It is alleged in the application that although the applicant was placed in the senior scale he on status was continuing as a Supervisor Barrack and Stores and therefore the denial to him all the benefits of fixation under FR 22(1) (a) (i) when he was promoted to a post of higher duties and responsibilities is wholly unjustified.



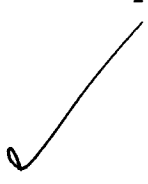
2. The respondents in their reply statement contend that as the pay scale of senior scale Supervisor Barrack and Stores and that of Barrack and Stores Officer were merged with effect from 1.1.1996 as there had been no movement from a lower scale to a higher scale as has been held by the Apex Court in Union of India & Ors. Vs. Ashoke Kumar Banerjee reported in (1998) 5 SCC 242 the applicant is not given the benefit of fixation under FR 22(1) (a) (i).

3. We have gone through the pleadings and materials placed on record and have heard Shri.O.V.Radhakrishnan, learned counsel of the applicant and Shri.S.K.Balachandran,ACGSC for the respondents. Taking us through the FR 22 (1) (a) (i) Shri.O.V.Radhakrishnan, learned counsel of the applicant, with considerable tenacity argued that when there is a promotion/appointment to a post carrying higher duties and responsibilities from a post of lower duties and responsibilities whether there be a movement from lower pay scale to a higher pay scale fitment according to FR 22 (1) (a) (i) is an absolute must in terms of FR 22 (1) (a) (i) because in the provision nothing has been stated about the movement from lower to higher pay scale while mention has been made only of the degrees of duties and responsibilities. Since the averment that the applicant was promoted from the post of Selection Grade Supervisor Barrack and Stores to the post of Barrack and Stores Officer by Annexure A-6 has not been refuted by the respondents on promotion the respondents are bound to give the applicant the benefit of FR 22 (1) (a) (i) argued the learned counsel. From Annexure A-6 order of the Garrison Engineer it is seen that the applicant was promoted from the post of Selection Grade Supervisor Barrack and



Stores to the post of Barrack and Stores Officer. However from Annexure A-27 dated 27.2.1993 presidential sanction was conveyed for redesignation of all the Supervisor Barrack and Stores Grade I (Senior Scale) in the scale Rs.2000-3200 as Barrack and Stores Officer Grade II in the scale of Rs.6500-200-10500 (Annexure A-27). Therefore, there was no promotion involved in the redesignation of Supervisor Barrack and Stores Grade I (Senior Scale) as Barrack and Stores Officer Grade II in the scale Rs.6500-200-10500. It being only a redesignation the question of application of provisions of FR 22(1) (a) (i) therefore does not really arise. Assuming for argument's sake that the applicant was as stated in Annexure A-6 order promoted as Barrack and Stores Officer in the scale Rs.6500-10500 from the post of Supervisor Barrack and Stores Grade I (Senior Scale) which was also in the scale of Rs.6500-10500 we have to see whether on such promotion the provision of FR 22 (1) (a) (i) are to be applied. A similar question was considered by the Apex Court in Union of India Vs. Ashoke Kumar Banerjee reported in (1998) 5 SCC 242 where the respondent Ashoke Kumar Banerjee while working as Junior Engineer in the senior scale Rs.1640-2900 in the CPWD after 15 years of service was placed in the scale Rs.2000-3500 attaching to the post of Assistant Engineer on a non functional basis and was given fixation of pay under the scheme invoking the provision of FR 22 (1) (a) (i), was later promoted as Assistant Engineer was not given the benefit of fixation under FR 22 (1) (a) (i). The claim was rejected. The C.A.T. Calcutta Bench allowed his claim in O.A.241/93. When the matter reached the Apex Court, the Court held :

"For the applicability of the FR 22(1) (a) (i) it is not merely sufficient that the officer gets a promotion from



one post to another involving higher duties and responsibilities but another condition must also be satisfied, namely, that he must be moving from a lower scale attached to the lower post to a higher scale attached to a higher post. If, as in this case, the benefit of the higher scale has already been given to him by virtue of the OM there is no possibility of applying this part of the FR which says

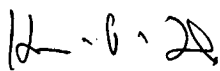
"his initial pay in the time scale of higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty five only, whichever is more".

4. Therefore according to the law laid down by the Apex Court in Ashoke Kumar Banerjee's case on the applicability of FR 22(1) (a) (i) there should be not only a promotion from a post involving lower duties and responsibilities to a post involving higher duties and responsibilities but should also involve a movement from a lower pay scale to a higher pay scale. Learned counsel of the applicant tried to distinguish the case on hand on facts. He argued that in the case under citation the respondent before the Apex Court had already been given one fitment invoking the provision of FR 22 (1) (a) (i) when he was given the higher pay scale and therefore it was in that context the Supreme Court refused to give him the benefits again. The ratio of the decision does not therefore apply to this case and the principle enunciated should be understood with reference to the context in which it was held, argued the learned counsel. In support of proposition of law, the learned counsel referred us to the ruling of the Apex Court in Indian Charge Chrome Ltd. & Another Vs. Union of India and Others reported in (2003) 2 SCC 533. We are aware of the well established proposition of law that the law has to be applied with reference to the facts of the case. The Apex Court in Ashoke Kumar Banerjee's case held that the respondent Shri. Banerjee was not entitled to get the benefit of fixation

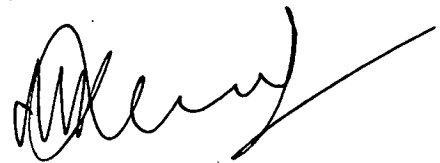
under FR 22 (1) (a) (i) not for the reason that it had already been given to him once in the same pay scale but on the principle laid down that for invoking the provisions of FR 22 (1) (a) (i) two conditions should be satisfied, namely, there should be an appointment from a post carrying lower duties and responsibilities to a post carrying higher duties and responsibilities as also a movement from a lower pay scale to a higher pay scale. In this scale even if there had been a movement from a post carrying lower duties and responsibilities to a post carrying higher duties and responsibilities since the applicant was already in the scale Rs.6500-10500 there has not been a move from a lower pay scale to a higher pay scale. We therefore do not find any legal support to the claim of the applicant that in his case on promotion as Barrack and Stores Officer the provision of FR 22 (1) (a) (i) should be applied.

5. In the light of what is stated above we find no merit in this application and therefore we dismiss the same. No order as to costs.

(Dated the 25th day of March 2004)



H.P.DAS
ADMINISTRATIVE MEMBER



A.V.HARIDASAN
VICE CHAIRMAN

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"MILITARY ENGINEERING SERVICE - FIXATION OF PAY"
BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No. 182 of 2002

M.Chერიან Vaidian

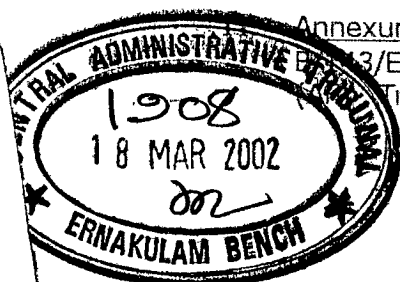
Applicant

Vs

Officer-in-Charge, C/o The Chief Engineer
Delhi Zone and others

Respondents

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O.V.RADHAKRISHNAN
COUNSEL FOR THE APPLICANT

