

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM**

Original Application No. 239 of 2005

Wednesday, this the 8th day of November, 2006

C O R A M :

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

B. Satheesh Kumar,
Superintendent (PS & C),
Integrated Fisheries Project,
P.B. No. 1801, Fore Shore Road,
Cochin – 16 ... Applicant.

(By Advocate Mr. T.D. Salim)

v e r s u s

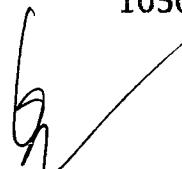
1. Union of India, represented by its
Secretary, Ministry of Agriculture,
Animan Husbandry & Dairying,
Krishi Bhavan, New Delhi – 110 001
2. The Director,
Integrated Fisheries Project,
Kochi – 682 016. ... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

The Original Application having been heard on 1.11.06, this Tribunal
on 8.11.06 delivered the following:

**O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

The question for consideration in this case is whether the applicant is
entitled to higher pay scale of 2000 – 3200 (pre-revised) and Rs 6500 –
10500/- (Revised) in respect of the post of Superintendent (Planning,



Scheduling & Control) (Group B Non-gazetted) on the basis of the fact that it was the above scale which his predecessor in the said post was afforded. The respondents rejected the case of the applicant on the ground that the predecessor of the applicant was granted the higher pay scale in pursuance of the order of the Tribunal while in this case, the competent authority did not find any necessity for upgradation of pay scale of the post of Superintendent (O&R) and to grant the applicant the pay scale of his predecessor.

2. A thumbnail sketch of the facts of the case are as under:-

(a) In the respondents' organization, three posts, (a) Foreman, (Rs. 425 - 640) (b) Superintendent (O & R) (Rs 550 - 900) and (c) Superintendent (Planning, Scheduling & Control) (Rs 550 - 900) (all pre revised) exist. The post of Foreman which is a Group 'C' post is subordinate to the post of Superintendent (O & R) which is a Group 'B' post. In 1984, vide Government of India letter No. 15-3/78-FV (Admn) dated 30-04-1984, the pay scale of Foreman was revised to Rs 550 900. This created an anomalous situation in that the subordinate post and superior post carry identical pay scale. The scale of Rs 550 - 900 as per the IV Pay Commission was revised to Rs 1640 - 2900. Thus, in OA No. 712/90 filed by one Shri Satheesh Babu, a claim was made for revision of the pay scale of Superintendent (O & R). And, this Tribunal in the said OA vide order dated 26-8-1991 held as under:-

"We are of the view that to treat the Foreman whose duties and responsibilities are considered to be lower in status and degree than those of Superintendent, as equal to the Superintendent in



the matter of pay scale is not proper or justifiable. ... we are convinced that the applicants have a legitimate grievance to be redressed. .. In this result, the application is allowed. The Annexure I letter is quashed and the respondents are directed to consider the question of revision of pay scale of the category of Superintendent (O & R) in the Integrated Fisheries to Rs. 2000 - 3500 which is the scale next above their existing scale with effect from the date of revision of pay scale of Foreman Workshop/Slipway, in the light of the observation made in the foregoing paragraphs. "

- (b) The above order was, with a view to rectifying a clerical error, modified to the effect the pay scale of Rs 2000 - 3500 was to be read as Rs 2000 - 3200 vide order dated 24-04-1992 in RA No. 4/92 in OA No. 712/90.
- (c) The post of Superintendent (O & R) as well as Superintendent (Planning, Scheduling and Control) being the feeder grade to the post of Asst. Engineer and they having hitherto carrying identical scale of pay of Rs 1640 - 2900/-, one Shri P.K. Lakshmanan filed OA No. 1579/92 claiming parity in pay scale at par with that of Superintendent (O & R) which was revised as stated in (b) above to Rs 2,000 - 3200/-. This OA was allowed vide order dated 27-07-1993 holding as under:-

"It is clearly stated in the chart that Supdt. (Planning, Scheduling and Control) and Supdt. (Operation and Repair) are feeder categories to the post of Assistant Engineer (W/shop). Even though respondents have attempted to distinguish the duties in respect of these two posts, I am of the view that for all purposes it should be treated as equal in every respect. In the result, I allow the application and direct the respondents to consider the claim of the applicant for fixation of pay in the scale of Rs 2000 - 3200 pursuant to Annexure 2 judgement and grant the same benefits which have been granted to Shri Satheesh Babu, the applicant in O.A. No. 712/90.... "

- (d) Thus, the pay scale of Superintendent (O & R) as well as



Superintendent (Planning, Scheduling and Control) was Rs 2,000-3,200 as early as in July, 1993 and the finding of the Tribunal was that in functional aspects also, the two posts are comparable.

(e) The applicant was appointed as Superintendent (Planning, Scheduling and Control) on 26-08-1994 as a direct recruit and his pay scale was Rs 1,640 – 2900/-, vide Annexure A-1 order dated 07-09-1994. On coming to know about the higher pay scale of Rs 2000 - 3200 afforded to the incumbents to the post of Superintendent (Planning, Scheduling and Control), the applicant moved a representation dated 16-12-1996 (Annexure A-5). After the applicant had filed OA No. 1178/98 in regard to his grievance which was disposed of by the Tribunal vide order dated 18-08-1998, whereby the respondents were directed to dispose of the Representation of the applicant in this regard, the respondents had rejected the representation of the applicant vide Memo dated 29.05.1999 giving the following reasons:-

"1. As per Statutory Recruitment Rules the post of Assistant Engineer (Workshop) which is in the pay scale of Rs 6,500 - 10,500 (revised) is to be filled up by promotion from the posts of Superintendent (P,S&C) and Superintendent (O & R) which carry the pay scale of Rs 5500 - 9000 (revised) It will be anomalous to place the feeder grades and promotion grade in the same pay scale. Further, the pay scales of the post of Superintendent has not been revised as claimed by Shri Satish Kumar.

2. The questions like appropriate scale of pay for a post or cadre taking into account the duties and responsibilities attached to it and the relativity of pay scales between different posts/cadres/feeder grades and questions of pay parity between various groups of employees etc., are matters which should be considered by Central Pay Commission appointed by Government of India as held by the Hon'ble Supreme Court of India in series of rulings. On the basis of the recommendation of the Fifth Central Pay Commission, the pre-revised scales of Rs 2000 - 3200 and Rs 2000 - 3500 have been merged and

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replaced by the revised scales of Rs 6500 - 10500. The fifth Central Pay Commission have not made any specific recommendations with regard to the pay scale of Superintendent (PS&C) and Superintendent (O&R). Accordingly, the appropriate regular replacement scale of Rs 5500 - 175 - 900 has already been granted to the post of the applicant w.e.f. 1.1.1996.

3.. The Hon'ble Central Administrative Tribunal Ernakulam vide their order dated 27-07-1993 in RA 4/92 had duly taken cognizance of the need to retain a higher scale for the post of Assistant Engineer (Workshop) than the pay scale of Superintendent (O&R) etc., the latter being the feeder grade of the former.

4. The posts of Superintendent (PS&C) and Superintendent (O&R) are direct recruitment posts and are not promotion grades for any post particularly that of Foreman and therefore, cannot be treated as hierarchically superior to Foreman.

5. The then incumbent of the post of Superintendent (O&R) Shri T. Satheesh Babu had drawn the higher pay scale of Rs 2000 - 3200 as per the orders dated 26-8-1991 of the Hon'ble Central Administrative Tribunal Ernakulam in OA No. 712/90. However, he continued to draw the same pay scale on his promotion to the higher post of Assistant Engineer (workshop) as the pay scale attached to that post being the same. Similarly, the then incumbent of the post of Superintendent P,S&C) Shri P.K. Lakshmanan had drawn the higher scale of Rs 2000-3200 as per the orders dated 27.7.1993 of the Hon'ble Central Administrative Tribunal in O.A. No. 1579/92. Consequent upon the promotion/retirement of Shri Satheesh Babu and Shri P.K. Lakshmanan, fresh recruitment to those two posts have been made in terms of the approved Recruitment Rules as there was no specific ruling in the above judgments to amend the relevant provisions incorporating the higher scale of pay for those two posts in the recruitment Rules. Subsequently, the Fifth Central Pay Commission which examined conditions of service and the pay scales of the various posts/grades in Integrated Fisheries Project have not made any specific recommendations for upgradation of the scales of pay attached to Superintendent (O&R) and Superintendent (PS&C) and Assistant Engineer."



(f) As the applicant was prosecuting higher studies and was also on leave on this score, he could not pursue the matter further for some time and by Annexure A-7 representation made in 2003, the applicant had requested the respondents to revise his pay scale to Rs 2000 - 3200 and the corresponding replacement scale of Rs 6500 - 10500/-. This representation was also rejected by the respondents vide Annexure A-8 Memo dated 15-06-2004 stating that the matter relating to revision of pay scale of Superintendent (P.S & C) was already examined by the Ministry in obedience of the Judgment of the C.A.T. and it was decided to retain the regular pay scale of Rs 5500 -9000 and hence, the case is not again considered. The applicant once again approached the respondents by letter dated 14-07-2004 followed by yet another application dated 20-08-2004 and claimed higher pay scale of Rs 6,500 - 10,500/- As there was no response to the aforesaid letters, the applicant has approached this Tribunal with the following reliefs:-

- (i) To quash Annexure A6 and Annexure A8 refusing to grant the benefit of scale of pay Rs. 6500-10500 is arbitrary, incorrect and illegal;
- (ii) To declare that the applicant is entitled to revision of pay equivalent to Rs. 2000-3200 (pre-revised), pay scale of Rs. 6500-10500 with effect from 1.1.1996, in tune with the directions of this Tribunal in O.A. Nos. 712/90 and 1579/92 alongwith arrears of pay with effect from 26.8.1994.

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3. Respondents have resisted the OA. According to them, revision of pay scale is a matter to be dealt with by the Government as held by the Apex Court in series of rulings and on the basis of the recommendations of the V Central Pay Commission, the pre-revised scales of Rs 2000 - 3200 and Rs. 2000 - 3500 have been merged and replaced by the revised scale of Rs. 6500-10500/-. With regard to pay scale of Superintendent (P, S & C) and Superintendent (O & R), the Pay Commission had not made any specific recommendation. The post of Superintendent (P, S & C) as per recruitment rules carries a scale of only Rs 1640 - 2900 (pre revised) and the C.A.T., while dealing with the case of Satheesh Babu and Lakshmanan did not specifically direct the respondents to revise the Recruitment Rules relating to the post of Superintendent (P,S & C) and as such, it was with the said pay scale of Rs 1640 - 2900 that notification was issued, in response to which the applicant had competed and had been selected. Subsequently also, the V Central Pay Commission did not make any specific recommendation in regard to the higher pay scale to the post of Superintendent (Planning, Scheduling and Control). If the request of the applicant is accepted, the same would result in an anomalous situation inasmuch as the pay scale of feeder post and promotional post (i.e. Superintendent and Assistant Engineer) would be the same, which is not permissible.

4. The applicant had filed his rejoinder, reiterating his stand.



5. Learned Counsel for the applicant submitted that when prior to the recruitment of the applicant, his predecessor was afforded the scale of pay of Rs 2000 - 3200 which meant that the scale of pay of Superintendent (Planning, Scheduling and Control) was revised from 1640 - 2900 to Rs. 2000-3200/-, the same should have been the scale for the post of Superintendent (Planning, Scheduling and Control) thereafter too and thus, the applicant too should have been fixed his pay in the said scale of Rs. 2000-3200. Otherwise, the higher pay scale would become the pay scale only for the applicant in the earlier OA. There cannot be a separate pay scale for a particular individual. Again, the findings of the Tribunal were that the post of Foreman being subordinate to that of Superintendent (O & R) as well as Superintendent (P, S & C), the pay scale for foreman and that of Superintendent cannot remain the same. It was for this reason that the pay scale of Superintendent was directed to be revised to Rs 2000 - 3200/-. Once the decision of the Tribunal had been implemented, irrespective of whether the Recruitment rules were amended or not, the scale of pay attached to the post of Superintendent (PS&C) became Rs 2000 -3200 when the applicant had joined the services in 1994 and had it been granted to the applicant at the time of his very appointment, then his scale of pay in the wake of acceptance of the V CPC would have been 6500 - 10500/-.

6. Respondents on the other hand contended that as, at the time when the Tribunal decided the cases of Satheesh Babu and Shri Lakshmanan, the

Tribunal did not specifically direct the respondents to amend the recruitment Recruitment rules the same had been maintained and the applicant was appointed only in the scale of Rs 1640-2900. Hence, there is no scope of accepting the claims of the applicant.

7. Arguments were heard and documents perused. The claim of the applicant revolves round as to whether the Tribunal's order dated 27-07-1993 whereby the pay scale of the applicant in the said OA, functioning as Superintendent (PS&C) was directed to be revised as Rs 2000 – 3200 was a judgment in *rem* or judgment in personem. To ascertain the same, reference to the aforesaid two orders i.e. order dated 26-08-1991 in OA 712/1990 and order dated 27-07-93 in OA 1579/92 is essential. The first order relates to revision of pay scale of Office Superintendent (O & R) from 1640 0 2900 to 200 – 3200. In its order dated 26-08-1981, the Tribunal has taken into account the fact that the post of Superintendent (O&R) is a Group B post and the same carries higher responsibilities than those of Foreman, which is a Group 'C' post with the pay scale scale of Rs. 550 – 900 (1640 – 2900). It was on this ground that the pay scale of the post of Superintendent (O & R) was directed to be revised to Rs 2000 – 3200/- . The fact that the post of Superintendent (O&R) and Superintendent (PS&C) are at par with each other in status, parity of functional responsibility etc., is the findings in the order dated 27-07-1993 consequent to which the pay scale of the post of Superintendent (PS&C) was also directed to be revised to Rs 2,000 – 3200/-.

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The fact that the incumbent to the post of Superintendent (PS&C) i.e. Shri P.K. Lakshmanan had drawn the higher scale of Rs 2000 – 3200 in the wake of the order of the Tribunal has been admitted by the respondent, vide para 5 of Annexure A-6, extracted above. Notwithstanding the fact that the Recruitment Rules were not amended in that case, on the basis of the Court's verdict, the said Lakshmanan was afforded the higher pay scale. The contention that the Tribunal has not specifically directed to amend the Recruitment Rules and as such, the applicant cannot be afforded the higher pay scale is not legally tenable. For, once in the case of Lakshmanan the respondents have accepted the verdict of the Tribunal and have implemented the order without challenging the same, the logical consequence should be that the pay scale attached to the post of Superintendent (PS&C) gets revised and amendment to the Recruitment Rules is only a formality to be fulfilled. Amendment to recruitment Rules should have been made by the respondents even without any such specific direction. This has not been done. Non amendment of the Rules is a clear lapse on the part of the respondents and the respondents cannot be permitted to encash the mistake of their own. In ***Rekha Mukherjee v. Ashis Kumar Das, (2005) 3 SCC 427***, the Apex Court has held, "*The respondents herein cannot take advantage of their own mistake.*") It was in the close heel of the said Lakshmanan that the applicant was appointed to the same post and as such, hostile discrimination is writ large on the very face of the act of respondents. Thus, the applicant, on the very date of his appointment to the post of

Superintendent (PS&W) in 1994 was entitled to higher pay scale of Rs 2000 – 3200/-. That would distinguish the difference in pay scale admissible to Foreman (Group C and subordinate to Superintendent). The very purpose of revision of pay scale of Superintendent (PS&C) from Rs 1640 – 2900 to Rs 2000 – 3200 was to have a difference in pay scale between group C and Group B post. That purpose, on the basis of which the Tribunal passed the earlier decisions as spelt above, would be stultified if the contention of the respondents that the recruitment rules having not been amended, the pay scale of Superintendent (PS&C) would restore back to Rs 1640 – 2900 (which is the pay scale of Foreman also) is accepted. Hence, there is no logic in the contention of the respondent in this regard.

8. It is not disputed that the applicant is the successor Shri Lakshmanan, the previous incumbent to the post of Superintendent (PS&C). It is also not disputed that the predecessor to the applicant i.e. Shri Lakshmanan had been afforded the pay scale of Rs 2000 – 3200, of course, under the order of the Tribunal. Further, it is not the case of the respondents that there has been change in the functional responsibilities attached to the post of Superintendent (PS&C) after the retirement of the said Shri Lakshmanan. Equal work had been performed both by the predecessor and the successor. Thus, it is the admitted fact that the applicant is similarly situated as Shri Lakshmanan. In a very recent case of ***State of Karnataka v. C. Lalitha, (2006) 2 SCC 747***, the Apex Court has held as under:-



"29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently."

The above decision of the Apex Court has been cited in a still recent decision of the Apex Court in the case of **Uttranchal Forest Rangers' Association vs State of UP** in CA No. 4249/2006 decided on 25-09-2006.

9. In the light of the above law laid down by the Apex Court, the contention of the respondent contained in para 11 of the counter "the competent authority did not find any necessity for upgradation of pay scale of the post of Superintendent (O&R) and to grant the applicant the pay scale of his predecessor" has to be summarily rejected.

10. Of course, one contention of the respondents has to be met with. After V CPC, the pay scale of Rs 2000 – 3200 and Rs 2000 – 3500 had been merged and one replacement scale of Rs 6500 – 10500 was brought into existence. Earlier, the post of Asst. Engineer carried a higher pay scale of Rs 2000 – 3500 and the said post of Assistant Engineer is higher in grade and functional responsibility and is in fact the promotional post to the post of Superintendent (PS&C) the pay scale of which was Rs 2000-3200. As such, according to the respondents, if the scale of pay of Rs 2000-3200 is granted



to the applicant as of 1994, w.e.f. 01-01-1996, his pay and the pay of an Asst. Engineer would be the same, which would be anomalous. Answer to this is not far to seek. Vide the case of **Dhyaneshwar Nandanwar vs Union of India (1993) 24 ATC 660 (jabalpur)** the post of Inspector RMS carried higher responsibility than the post of Sorting Assistant in Lower Selection Grade. However, on appointment to the former post from the latter one, pay has to be fixed under the then FR 22 C [ie the existing FR 22 (1)(a)(i)]. In that case, the two posts (feeder and promotional) happened to carry the same pay scale (Rs. 1400-2300) on account of IVth C.P.C. recommendations; earlier the pay scales were Rs. 425-640 and Rs. 425-700 respectively. Thus, the objection is not that important. If the contention of the respondents is accepted, then it would directly encroach upon the provisions of Art. 16 of the Constitution, in that the predecessor was afforded the higher pay scale, while the successor, lower pay scale!. Fundamental right of equality in matters of employment cannot be compromised. In any event, whatever treatment was given to Shri Satheesh Babu and Shri P.K. Lakshmanan, vide para 5 of the reasons for rejection (extracted in para 2(e) above) would be extended to the applicant's case as well.

11. In view of the above, the OA succeeds. It is declared that the applicant's appointment order specifying the the scale of Rs 1640 – 2900 for the post of Superintendent (PS&C) in 1994 notwithstanding, as his



predecessor, i.e. the incumbent to the said post prior to the appointment of the applicant was paid higher pay scale of Rs 2000 – 3200, the same pay scale would be applicable to the applicant. However, the same shall be notional and not actual till the date of his filing of the original application i.e. upto 31.03.2005, whereafter, the applicant would be entitled to the arrears of pay and allowances.

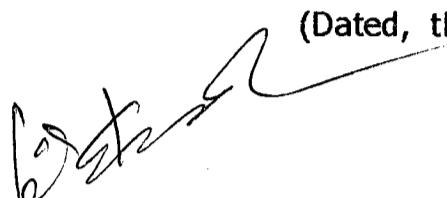
12. Respondents are, therefore, directed to fix the pay of the applicant from the date of his appointment i.e. September, 1994 in the scale of Rs 2000 – 3200 and afford the increment due to the applicant for the year 1995 and thereafter, w.e.f. 01-01-1996, his pay shall be in the scale of Rs. 6,500-10,500/-. By affording due increment, pay upto 31-03-2005 be worked out which would be on notional basis. It is thereafter, the pay of the applicant in the said scale of Rs 6,500 – 10,500/- shall be actual. Arrears of pay and allowances accrued on this score is to be paid w.e.f. 01-04-2005. It is fairly expected that the Respondents would take necessary step to amend the Recruitment Rules for the post of Superintendent (PS&C).

13. This drill of revising the pay scale of the applicant as aforesaid and payment of arrears to him shall be performed within a period of six months from the date of communication of this order.

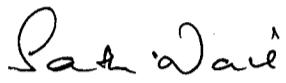
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14. No order as to costs.

(Dated, the 8th November, 2006)



K B S RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

CVR.