

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 281/2010

Tuesday, this the 22nd day of November, 2011.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

1. K.O.Yohanan,
SC No.96201,
HVD-A, TOMD, VSSC,
Thumba, Trivandrum.
2. S.R.Vijayakumar,
SC No.96060,
HVD-A, TOMD, VSSC,
Thumba, Trivandrum.Applicants

(By Advocate Mr Vishnu S Chempazhanthiyil)

v.

1. The Controller,
Vikram Sarabhai Space Centre,
Thumba, Trivandrum-695 022.
2. The Secretary,
Department of Space,
Anthriksh Bhavan,
Bangalore-560 094.Respondents

(By Advocate Mr Sunil Jacob Jose, SCGSC)

This application having been finally heard on 11.11.11, the Tribunal on 22.11.2011 delivered the following:

ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

M.A. No. 303 of 2010 for preferring joint application under Rule 4(5) of the C.A.T. (Procedure) Rules, 1987 is allowed.

2. The applicants No. 1 and 2 have been functioning as Heavy Vehicles

Driver since 02-02-1998 and 02-07-1998 respectively. Though earlier, the two were inducted as Light Vehicle Driver respectively on 05-07-1993 and 01.10.1993, the appointment as Heavy Vehicles Driver was a direct recruitment.

2. The post of Heavy Vehicle Drivers is tenable by direct recruitment. Light Vehicle Drivers are also eligible to participate in the selection. Those Light Vehicle Drivers, who were not appointed as Heavy Vehicle Drivers were entitled to be placed in the higher grade as per DOS OM No. 2/2(7)/91 I(Vol IV) (i) dated 02-03-1995. Such a higher placement led to an anomaly in that when some senior Light Vehicle Drivers got selected as Heavy Vehicle Drivers, their pay happened to be lower than some of the Light Vehicle Drivers, who got the benefit of the placement to the higher scale as contained in the O.M. No. 2/2(7)/91 I(Vol IV) (i) dated 02-03-1995, referred to above. To obviate such an anomaly, the respondents have issued Annexure A-5 OM No. 2/2(7)/91 I(Vol IV) (iii) dated 02.03.1995, which inter alia reads as under:-

"(i) the employees who had worked as LVDs and subsequently recruited as HVDs, on selection in the same Centre/Unit and not getting the placement in the higher grades available as per ratio, are only eligible. Such employees are to be treated as a different category for the purposes of placement in higher grades.

(ii) they should have completed the residence period required for placement in such grade, to taking into account the combined service of LVD and HVD.

(iii) it is to be established that such HVDs, and they continued to remain in LVD category, would have got placement in the higher grades, the erstwhile immediate juniors continuing in the category having actually been placed in a higher grade.

(iv) the grades in which such HVDs are placed, in accordance with these guidelines, will be purely personal to them and will continue to hold such grades till they retire or get placements in the grades held by them as per the authorised ratio or are appointed to any other post etc. whichever is earlier. Consequent on vacation of such grades by them, the posts are to be operated in the induction grade in HVD category (i.e.Rs.1150-1500).

(v) placement in higher grades in accordance with these guidelines is subject to seniority (arrived at in accordance with para 1 (ii) above) cum-fitness as assessed by the DPC and passing of the trade test



stipulated for appointment to such grade. The syllabus for the Trade tests is as given in Annexure-II to DOS OM No.2/2(7)/91-I(VOL.IV)(ii) dated 02.03.1995.

(vi) the grade and date of placement in such cases are to be decided with reference to the grade and date of placement of the erstwhile immediate junior in LVD category and continuing as LVD.

(vii) the benefit of placement in higher grade is a one time measure and is restricted to LVDs selected and appointed as HVDs prior to the issue of the OM No.2/2(7)/91-I(Vol.IV)(ii) dated March 02, 1995."

3. Some juniors to the applicants in the grade of LVD were promoted to the post of LVD B and were placed in the post of LVD B in the pay scale admissible to the said post. The said scale is higher than that of the applicants who were appointed as HVD. In a few cases, under such a situation, on the representation of the senior for stepping up of the pay at par with juniors, the respondents had allowed the same. Details of junior to the applicants drawing higher pay The first applicant made representations dated 11-08-2003 followed by another one dated 09-01-2004. These have been respondent, of course, in negative, vide Annexure A-10 Memorandum dated 10-09-2004 and a similar decision in the case of the other applicant has also been communicated vide OM dated 10-09-2004 (Annexure A-10-A, the reason for negating the claims being based on para (vii) extracted above. In both the communication, one more sentence had been included stating as under:-

"Shri Vijayakumar is also informed that the matter has been taken up with DOS and the Centre has not received any further communication/directions from the Department in this regard till date. The matter is, however, being pursued with the Department from time to time."



4. The applicants thus waited for the final response and sent an expeditor vide Annexure A-11 representation dated 06-02-2006 followed by another dated 05-08-2008 and 09-05-2009. Absence of response to the above forced the applicants to move this OA seeking following reliefs:-

- (1)Direct the respondents to extend the benefit of the scheme at para 7(ii) of Annexure A-6.
- (2)Direct the respondents to grant higher grade to the applicants in the category of HVD with effect from the date that the juniors in LVD category are granted the benefit of higher grade.
- (3)Declare that restricting the benefit of scheme at para 7(ii) of Annexure A-6 to those LVDs who are selected and appointed as HVDs prior to 2.3.1995 is illegal and arbitrary and has no basis.
- (4)Direct the 2nd respondent to take a decision with respect to the anomaly as promised in Annexure A-10 and Annexure A-10(a).

5. Respondents have contested the O.A. According to them, the provisions relating to fixation of pay of LVD on promotion to HVD have been concisely given in para 5 of the reply which is reproduced below:-

“5. Light Vehicles are operated by Light Vehicle Drivers (LVD for short) who are initially appointed as Light Vehicle Drivers-A and their career progression is made through LVD'B', Sr.LVD'A' and finally to Sr. LVD'B' on completion of the required residency period in each grade. Similarly, Heavy Vehicles are operated by Heavy Vehicle Drivers (HVD for short) who are initially appointed to the post of heavy Vehicle Drivers'A'. Their career progression is through HVD'B', Sr. HVD'A' and finally to Sr HVD'B' on completion of the required residency period in each grade. The promotions are in accordance with the guidelines subject to seniority-cum-fitness as assessed by the DPC and after qualifying in the trade test stipulated for promotion to each grade. In addition to the above, LVD-As who posses Heavy Vehicle driving license with the prescribed academic qualification and driving experience are eligible to apply, if they so desire, along with outside candidates for the post of HVD'A'. Such of those LVDs who are appointed as HVD'A' through direct recruitment process on or after 2.3.1995 will be treated as fresh direct appointees as HVD-A and shall not be eligible to count or reckon in any manner whatsoever the past service of LVD, for future placement/promotion to the higher grades applicable to either LVDs or HVDs as the cases may be.



6. In their reply, the respondents have in detail explained a case on identical ground dealt with by the Bangalore Bench wherein the department had been asked to reconsider the issue in the light of the recommendations of the V Central Pay Commission vide paragraph 55.56 and 95.18 thereof and the respondents have considered the same which resulted in the issue of Annexure A-6 OM dated 05-08-2002. Para 9 of the reply thus, reads as under:-

"9. With reference to the contentions raised in paragraph 4 of the OA it is submitted that the memorandum dated 5.8.2002 as per Annexure A-6 was issued by the Department of Space to Shri M.R.Nagarajan and 51 other HVDs who had approached the Bangalore Bench of this Tribunal by filing OAs No.1104 and 1194-1244 of 2001 with a prayer to quash the Department of Space memorandum No.1/4(2)/2000-V dated 1.8.2001 and to place them in the higher scale of pay. The Memorandum dated 1.8.2001 was issued by the Department of Space in compliance with the order dated 7.6.2001 of the Hon'ble CAT, Bangalore in O.A.507 and 1206 to 1256/2000 filed by Shri M Bhaskar Reddy and 51 other HVDs, explaining the reasons for not being able to agree to the request made by the applicants for assignment of higher scales of pay for HVDs. The Hon'ble CAT subsequently disposed of the OAs filed by Shri M.R.Nagaraja & 51 other HVDs, partly allowing the applications. The Hon'ble Tribunal had quashed the impugned Memorandum dated 1.8.2001 observing that the same Memorandum shall not be understood to have expressed any opinion on merits of the case. The Hon'ble Tribunal had also directed the Department to reconsider the entire issue keeping in view the 5th CPC recommendations contained in para 55.56 and 95.18 which deal with the grades and scale of pay for the drivers of Government of India as a whole and the Drivers of Department of Space/ISRO respectively, and pass appropriate Orders. As directed by the Hon'ble Tribunal, Department of Space reconsidered the entire, issue and found no justification for assigning higher scales of pay to HVDs than what was prevalent at that time and the decision was communicated to all the respondents vide Memorandum dated 5.8.2002 as per the Annexure A-6. Para 7(ii) of Annexure A-6 Memorandum, briefly specifies the back ground of and the provisions for grant of higher scale to the LVD turned HVDs existing in the Department. As per this provision, when an LVD, who is junior to the LVD turned HVD, gets promotion earlier than the latter, the LVD turned HVD is given promotion to the same grade as that of the junior LVD purely on Scale Personal Basis, after due review process, as a special case. The above para 7(ii) was incorporated by the Department in the memorandum dated 5.8.2002 duly examining the provisions contained in the OM dated 2.3.1995. The OM dated 2.3.1995 clearly stipulates that the benefit of placement in higher grade is a one time measure and is restricted to LVDs selected and appointed as HVDs prior to the date of issuance of the OM, i.e. before 2.3.1995."



7. In reply to the contention raised by the applicants as to similarly situated cases having been granted the stepping up of pay, the respondents have in para 11 stated as under:-

"11. The contention raised by the applicants in para 6 of the O.A that the respondents implemented the scheme noted in para 7(ii) of the Annexure A-6 in respect of similarly situated persons is far from truth and devoid of fact. The Annexure A-9 office order was issued to Shri K.R.Vijayan by the respondent placing him in the scale of pay of Rs.4500-125-7000 (Heavy Vehicle Driver-C grade) on scale personal basis with effect from 1.3.2004 (FN) consequent on promotion of his erstwhile immediate junior in the LVD category, Shri KN Ponnappan Nair to the post of Light Vehicle Driver'C' on 1.3.2004. In this connection it is respectfully submitted that Shri K.R.Vijayan became HVD on 7.2.1994 i.e. prior to the issuance of OM dated 2.3.1995 and hence he was eligible to be considered for grant of higher grade, whereas in the cases of the applicants, their appointments as HVDs were on 2.2.1998 and 2.7.1998 respectively, i.e. after 2.3.1995, and hence their cases are altogether different from Shri K.R.Vijayan. Accordingly, vide Annexure A-9 office order, Shri K.R.Vijayan was granted higher grade on scale personal basis. Those LVDs who became HVDs prior to 2.3.1995 and those who became HVDs on or after 2.3.1995 cannot be considered as similarly placed in view of the OM dated 2.3.1995 clearly stipulating the conditions for award of higher grade on "Scale Personal" basis. The former opted for HVD category without visualizing a situation where they may be in a disadvantageous position by way of their erstwhile junior LVDs getting promotion earlier than them. On the other hand, the latter opted for HVD category clearly knowing the fact that in the event of their erstwhile junior LVDs getting promotion earlier than them, they will not be eligible for placement in higher grade on Scale Personal basis, as the applicants moved over to HVD after 2.3.1995. Therefore, the contentions of the applicants that similarly situated LVD turned HVDs were placed in the higher grade on scale personal basis are baseless arguments foisted merely for the sake of sustenance of the OA and to mislead the Hon'ble Tribunal. The applicants and Shri K.R.Vijayan are not 'similarly placed' since the latter became HVD-A prior to the cut-off date (2.3.1995) and the former became so only after that date as explained above."

8. Thus, the main reason for rejection of the cases of the applicants is that the applicants' appointment to the post of HVD having been posterior to OM dated 02-03-1995, they are not entitled to the benefits conferred through that O.M.

9. Counsel for the applicants submitted that the representations of 2006 to 2009 are yet to be responded to by the respondents. He has invited our attention to the details contained in the annexures, especially as to the examples of the juniors to the applicants in the level of LVD-A placed in the higher pay and also as to the stepping up of pay having been allowed to similarly situated individuals, vide Annexure A-9 order dated 20-08-2004. Thus, the counsel for the applicants contended that whatever good grounds persuaded the respondents to afford placement in the higher stage of pay in respect of other similarly situated case the same grounds being present in the case of the applicants, the respondents are to extend identical benefits to the applicants as well.

10. Counsel for the respondents invited our reference to para 5, 9 and 11 of the reply as extracted above and contended that since the promotion of the applicants to the post of HVD was posterior to the date of issue of OM dated 02-03-1995, the provisions of the same being an one time measure, the applicants cannot be extended the benefits.

11. Applicant has filed the rejoinder after the orders were reserved and the same has also been entertained and considered. No new points have been added therein.

12. Arguments were heard and documents perused. First it is to be mentioned here that Annexure A-9 order in respect of one Shri K.R. Vijayan refers to OM No.2/2(7)/91 I(Vol IV) (iii) dated 02-03-1995(though erroneously indicated as of 2005). Again, in so far as that case is concerned, it is seen



that the individual had been placed at a higher pay scale of Rs 4,500 – 9,000 which is the pay scale attached to the post of HVD – B. Obviously, the said individual would have been appointed as HVD – A from a date anterior to 02-03-1995.

13. The question is whether there is discrimination (offending the equality clause) in matters of pay fixation on the basis of date of appointment as HVD -A in that those who were appointed as HVD A prior to 02-03-1995 would be eligible for higher placement at par with their juniors in the event of the juniors getting promotion as LVD B and being placed at a higher pay scale, while the same is not admissible to those appointed as HVD A after 02-03-1995. Obviously not. For, the date 02-03-1995 is the date upto which the post of LVD and HVD had only two grade structure (with equal scale of pay of HVD A and LVD B) and it is after 02-03-1995 that there came to be three grade structure and in fact, the scale of pay of LVD B is higher than that of HVD A. It was for the applicants to choose whether to remain as LVD and without participating in the direct recruitment as HVD A and await their promotion as LVD B which carried higher pay scale. They chose to participate in HVD-A as a direct recruitment was with their eyes wide open to know the above difference in pay scales. It is their choice and the order dated 02-03-1995 clearly stated that it is an one time measure. In addition, clause (b) of the offer of appointment vide Annexure A-4 dated 21-01-1998 inter alia stipulates that no claim for higher pay or higher grade or premature promotion will be entertained. Thus, once the applicant has accepted the offer of appointment with such conditions duly specified, he cannot claim higher pay.

14. LVDs who got their appointment as HVD-A prior to 02-03-1995 would get the benefit of placement in higher stage at par with their erstwhile junior who

got his promotion as LVD-B, 'as and when occasion arose'. This concession is available only to those LVD turned HVD, whose appointment as HVD was prior to 02-3-1995 and not to those who were appointed after 02-03-1995. Shri K.R. Vijayan belonged to the former category, while the applicants, the latter category. Those LVD turned HVD whose appointment to the post of HVD prior to 02-03-1995 certainly formed a separate class. Thus, there cannot be any comparison of the case of the applicants with that of the said Shri K.R. Vijayan referred to in Annexure A-9.

15. The examples cited by the applicants in their representations at Annexure A-7 and A-8 would go to show that the erstwhile juniors continue to be in the LVD and their higher pay scale is due to their promotion in the grade of LVD from LVD A to LVD B. Obviously, such individuals would not be entitled to the benefit of second ACP under the ACP scheme as they had got their promotion from LVD A to LVD B. If they come under MACP, they would be considered only for two of the three MACP available. In the case of the applicants, their appointment being one under direct recruitment, their past services of LVD A would not be reckoned for any purpose save for qualifying service, and they would be entitled to the full benefits available under ACP and MACP. Thus the difference between the applicants and the juniors cited by them in their representation is that whereas the applicants would be entitled to three financial upgradations under MACP, their juniors would be entitled only to two such financial upgradation under ACP/MACP. In the end, the juniors pay scale would terminate at Rs 1320 – 2040 with two promotions or financial upgradations as the case may be, while that of the applicants would go beyond the erstwhile 1320-2040 by virtue of their entitlement to three MACP.



16. Thus, we do not find any merit in the OA and the same is accordingly dismissed. Under the circumstances, there shall be no orders as to costs. 

K NOORJEHAN
ADMINISTRATIVE MEMBER



Dr K.B.S.RAJAN
JUDICIAL MEMBER

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