

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 41/1991  
~~T. A. No.~~  
~~XXXXXX~~

~~199~~

DATE OF DECISION 30.6.92

N.A.Ganapati \_\_\_\_\_ Applicant (s)

Party in person \_\_\_\_\_ Advocate for the Applicant (s)

Versus

The Union of India represented by the  
Secretary to the Ministry of Defence, Ministry of Defence,  
New Delhi-11 and three others.

Mr.K.Prabhakaran,ACGSC \_\_\_\_\_ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. N.DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 29.12.1990 the applicant a retired employee of the Naval Physical and Oceanographic Laboratory under the Ministry of Defence has challenged the impugned order dated 12.6.89 at Annexure-D by which 1079 names of Chief Draughtsmen and Senior Scientific Assistants in the higher pay scale of Rs.2375-3500 as per the Award of the Arbitration Board was circulated, is violative of Articles 14 and 16 of the Constitution and has prayed that the first respondent be directed to implement the Arbitration Award from 22nd September 1982 and to place the applicant in the aforesaid higher pay scale with effect from that date with all consequential benefits along with 14% interest on the arrears of pay and allowances. The brief facts of the case are as follows.

2. The applicant joined the Indian Naval Physical Laboratory now known as Naval Physical and Oceanographic Laboratory (NPOL) under the Ministry of Defence, as Laboratory Assistant on 10.5.1962. Through various promotions he was appointed as Senior Scientific Assistant(SSA) on 25.3.1980 and as Junior

Scientific Officer (JSO) on 13.9.1989. He retired on superannuation on 31.1.1990. On the recommendations of the Third Pay Commission of 1973, the pay scale of Foremen was fixed as Rs.840-1040 and that of Senior Scientific Assistants as Rs.550-900. The SSAs claimed parity in pay scale with the Foremen as both of them were feeder categories to the post of JSO. In accordance with the prescribed procedure, the matter was referred to the Board of Arbitration for compulsory arbitration which after hearing arguments on both the sides, recommended the pay scale of Rs.840-1040 for the SSAs. In accordance with the Award at Annexure-A dated 12th August, 1985, the Award was to take effect from 22nd September 1982. According to the applicant, the first respondent after a lapse of three years accepted the Award with modification and in violation of the Scheme and without <sup>the</sup> approval of Parliament unilaterally fixed the date of implementation of the Award as 1st January 1988 instead of 22nd September 1982. The second respondent issued a seniority list of SSAs as on 1st January 1988 to be considered for placement in the higher scale of Rs.2375-3500 which is the revised pay scale equivalent to the old pay scale of Rs.840-1040. In that list the applicant ranked at Sl.No.107. However, in the list of 1079 SSAs for grant of higher pay scale with effect from 1.1.88 at Annexure-D the applicant was denied the higher pay scale while 822 SSAs were given the same. According to the applicant, even after allowing for 822 SSAs there were 257 posts of the higher scale vacant but the applicant was denied the same even though he was the senior-most SSA in the NPOL and third in the All India Seniority List. The applicant's representations of 4.7.89, 23.8.89 resulted in the reply dated 15.1.90 a few days before his retirement, at Annexure-G indicating that since he had already been promoted as JSO in September 1989, he was no more eligible for placement in the higher pay scale of SSA as per the Arbitration Award. The applicant has alleged that the 3rd respondent has <sup>deepseated</sup> grudge against the applicant. The contention of the applicant is that the higher pay scale was allowed to the holders

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of 822 posts of Annexure-B strictly on the basis of seniority as all the SSAs were discharging the same type of duties. Denying the higher scale to the applicant in spite of his seniority position, is violative of Articles 14 and 16 of the Constitution. The 49% of the SSAs, according to the Award, could not be chosen for the higher pay scale indiscriminately as the 822 upgraded posts could not be filled up on the criteria of promotion in view of the circumstances in which the Award was given. The higher scale was given on the principle of equal pay for equal work to those discharging the duties of SSA and since there is no difference in duties amongst the SSAs, the higher pay scale should not have been given to some and denied to others. For a similar Award of M.T. Drivers the Selection Grade 'introduced' was filled up on the basis of seniority. He has further argued that he has not been communicated any adverse entry and accordingly the higher pay scale cannot be denied to him on the basis of uncommunicated adverse reports. The applicant was promoted as JSO in 1989 whereas the SSAs were considered for placement in the higher pay scale in that very year. If the applicant was found fit for promotion as JSO, a post carrying higher duties and responsibilities, denial of the upgraded pay scale as SSA during that period is arbitrary and discriminatory.

3. In the counter affidavit it has been stated that taking into consideration the condition of national economy and financial implications, the Government decided to implement the Award with effect from 1st January, 1988 instead of 22nd September 1982 and this was approved by both the Houses of Parliament. The higher pay scale of Rs.840-1040(revised to Rs.2375-3500) has been treated as non-functional Selection Grade to be granted on the basis of seniority subject to the rejection of unfit from amongst Chief Draughtsman and Senior Scientific Assistants who have rendered minimum of three years of regular service in the grade. Considering that the jump from Rs.1640-2900 of SSAs(Ordinary Grade) to that of Rs.2375-3500 as SSAs in the Selection Grade amounted to ~~Rs.735/-~~ <sup>Rs.735/-</sup> and ~~Rs.600/-~~ <sup>Rs.600/-</sup> in the maxima to rejection and minima of the pay scale, the principle of screening by seniority subject/

Sd/-  
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of the unfit was laid down. The respondents have stated that the applicant's case was considered by a Departmental Selection Committee but on the basis of his record of service for the <sup>three</sup> years 1985-87, the Committee considered him to be unfit for the grant of higher pay scale. As regards the date of implementation of the Award, they have referred to the decision of the New Bombay and Bangalore Benches of the Tribunal which upheld the implementation from 1.1.88. The respondents, however, have conceded that in September 1989 the applicant was considered by the DPC for promotion to the post of Junior Scientific Officer on the basis of the ACRs of five years from 1984 to 1988 and he was found fit for promotion and was promoted as JSO in September 1989. He was found to be suitable for promotion because five years (1984-88) CRs were taken into account, whereas for the Selection Grade of SSA only three years (1985 to 87) reports were taken into account. They have stated that the same criteria were followed for M.T. Drivers also.

4. In the rejoinder the applicant has stated that the resolution of the Parliament was obtained on the Award after the Principal Bench of the Tribunal gave a decision in favour of the Scientific Workers Association. He has challenged the mode of selection on the basis of merit for giving higher pay scale. He has also questioned consideration of three Confidential Reports for the award of higher pay scale as SSA stating that it was not a case of promotion. He has further stated that he cannot be considered to be unfit as SSA when he was promoted as JSO in 1989, considering three years CRs also is arbitrary. He has referred to a meeting in 1985 when there was some altercation between him and third respondent about <sup>whether</sup> opening and closing of doors of all rooms of the Laboratory should be done by <sup>the</sup> Scientific Staff or Group IV servants.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. It is admitted that while in May 1989 on the basis of three years CR, the applicant was found unfit for promotion as SSA in the scale of <sup>Rs. 2375-3500</sup> ~~Rs. 1840-2900~~, he was found fit for promotion to the next higher grade of JSO in the <sup>scale</sup> ~~scale~~ of JSO.

Sd/-  
Sd/-

Rs. 2375-3500 ✓  
Rs. 1840-2900 ✓  
Sd/-

*See* scale of Rs. 2375-3500 in September 1989 taking into account five years CR. This appears to us to be anomalous that in the same year one should be found to be unfit for a lower post but fit for the higher post. Further, since the respondents themselves have admitted that the higher pay scale of SSAs was only a non-functional Selection Grade and there was no change of duties and responsibilities between the Ordinary Grade SSAs and Higher Grade SSAs, it is still more anomalous that the applicant who had been holding the post of SSA from 25.3.1980 to September 1989 should be found unfit for appointment as Selection Grade SSA with effect from 1.1.88. In these circumstances we are fully convinced that the finding of the DPC that the applicant is unfit for non-functional Selection Grade of SSA is perverse and cannot be accepted. The contention taken in the communication dated 15.1.1990 at Annexure-G that "since you have already been promoted as JSO in September 1989 you are no more eligible for placement in the higher pay scale of SSA as per the Arbitration Award" is also not only at variance with the contention taken by them in the counter affidavit, but is also unreasonable. The applicant's subsequent promotion as JSO in 1989 does not <sup>and cannot</sup> disqualify him for promotion to the Selection Grade of the SSA as from 1.1.88 when admittedly he was working as an SSA and not as JSO.

6. The contention of the applicant, however, that the Award should have been implemented from 22nd September 1982, cannot be accepted in view of the ratification of the Government's decision by the Parliament.

7. In the conspectus of facts and circumstances we allow this application in part to the extent of directing the respondents that the applicant should be granted the non-functional Selection Grade with effect from 1.1.88 with all consequential benefits of revision of pay and allowances and pension. We also direct that arrears of pay and allowances and of pension be paid to the applicant within a period

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of three months from the date of communication of this order. In the circumstances of the case, no interest on the arrears can be allowed nor any cost of the proceedings.

*N.D. Dharmadan*  
30.6.92

(N.DHARMADAN)  
JUDICIAL MEMBER

*S.P. Mukerji*  
30.6.92

(S.P.MUKERJI)  
VICE CHAIRMAN

n.j.j

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

~~XXXX~~ No. R.A 109/92 & R.A 110/92  
~~XXXX~~ No. in O.A 41/91 ~~188~~

DATE OF DECISION 1.9.1992

N.A Ganapati                      Review                      Applicant (s) in RA 109/92  
The Union of India represented by  
the Secretary to the Ministry of Defence, New Delhi-11 and 2 others                      Review Applicants in R.A 110/92  
In person (RA 109/92)                      Advocate for the Applicant (s)  
Mr.K.Prabhakaran (RA 110/92)  
The Union of India represented by                      Respondent (s)  
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N.A.Ganapati                      (R.A 110/92)                      Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. N.DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

R.A 109/92 has been filed by the original applicant and R.A 110/92 have been filed by the original respondents in O.A 41/91 seeking review of our judgment dated 30.6.1992. By that order the original application was allowed with the direction to the respondents that the applicant should be granted non-functional Selection Grade with effect from 1.1.88 with all consequential benefits of revised pay, allowances and pension. We had in that judgment found that the finding of the respondents in May 1989 that he was unfit for promotion to the non-functional Selection Grade of SSA was perverse.

This was because he had been working as SSA from 1980 and also because in the very same year, i.e, in September 1989 he was found fit to be promoted to a functional higher grade of Junior Scientific Officer. We also found that the applicant could not be denied promotion to the Selection Grade of SSA from 1.1.88 on the ground that he had been promoted as JSO in September 1989 especially when he had been working as SSA right from 1980 to 1989.

2. In R.A 109 the review applicant who is the original applicant has argued that the benefit of the Selection grade should have been given to him in accordance with <sup>the</sup> Award from September 1982 instead of from 1.1.88. This point had been dealt with by us in the judgment itself by stating that the Parliament ratified the Government's decision to give the benefit of the Award from 1.1.88 and therefore, the applicant cannot claim it from 1982. This decision <sup>of ours</sup> cannot be questioned in a review application and this cannot be considered <sup>to be</sup> an error apparent on face of record. If the review applicant feels aggrieved his remedy lies in appeal to the Supreme Court in accordance with law. The review application, therefore, has no force.

3. The other review application R.A110/92 has been filed by the original respondents on the ground that this Tribunal cannot question the recommendations of the DPC . They have referred to some rulings of the Supreme Court in that connection. As has been stated above , the recommendation of the DPC was found by us to be perverse.



We did not go into the merits or niceties of the recommendations of the DPC. A judicial forum can definitely set aside the recommendation of the DPC if it is found to be perverse, malafides or influenced by extraneous considerations. This is established law. In any case the merits of the judgment cannot be questioned in a review application and the point raised by the original respondents in the review application, cannot be said to be an error apparent <sup>the</sup> on/face of record. In this case also, the remedy lies in appeal, not in review.

4. If Hon'ble Judicial Member(I) agrees, both the review applications can be dismissed by circulation.

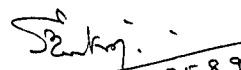
5. While going through the judgment some typographical errors came to my notice. In para 3 on page 3 of the judgment in the second line from the bottom, the figures 375 and 700 have been erroneously typed in place of the figures 735 and 600. On page 4 para 5 of the judgment in the second line from the bottom the pay scale of Rs.1640-2900 has been erroneously typed for the correct pay scale of Rs.2375-3500 which is the revised pay scale of the Selection Grade SSA. Likewise on page 5 of the judgment in the first line at the top the pay scale of Rs.2375-3500 has been indicated to be the pay scale of JSO. This is the pay scale of Selection Grade of SSA. Reference to this pay scale should, therefore, be omitted.

6. If Hon'ble Judicial Member(I) agrees, we may suo motu correct the aforesaid typing mistakes as follows:-

- a) The figures Rs.375/- and Rs.700/- occurring in the second line from the bottom, of para 3 on page 3 of the judgment should be corrected and read as Rs.735/- and Rs.600/- respectively.

- b) The figures Rs.1640-2900 occurring in the second line from the bottom in para 5 of page 4 of the judgment should be corrected and read as Rs.2375-3500.
- c) The words and figures "in the scale of Rs.2375-3500" occurring in the last bottom line on page 4 and continuing in the first line on page 5 in para 5 of the judgment, shall be deleted.

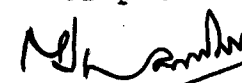
7. The aforesaid corrections are to be carried out at the time of pronouncement of this order in the open Court with the direction to the Registry to communicate the corrections to all concerned.

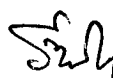
  
25.8.92  
(S.P. Mukerji)  
Vice Chairman

Hon'ble Member (J)

I agree 

Order pronounced in the open court today.

  
(N. Dharmadan)  
Judicial Member

  
(S.P. Mukerji)  
Vice Chairman

1-9-92

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N.A.Ganapati (R.A 110/92) ~~Advocate for the~~ Respondent (s)

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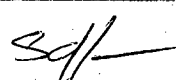
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(S.P. Mukerji)  
Vice Chairman

Hon'ble Member (J)

*I agree*

Order pronounced in the open court today.

  
(N. Dharmadan)  
Judicial Member

  
(S.P. Mukerji)  
Vice Chairman

1-9-92