

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 506/96

~~Transfer Application No.~~

Date of Decision : 20/2/2001

Shri Dinkar Laxmanrao Mhaski

Petitioner

Shri R.K. Srivastava

Advocate for the
Petitioners

Versus

Union of India and others.

Respondents

Shri Govind Mishra.

Advocate for the
respondents

C O R A M :

The Hon'ble Shri S.L. Jain, Member (J)

The Hon'ble ~~Shri~~ Ms. Shanta Shastry, Member (A)

- (1) To be referred to the Reporter or not ? X
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library. Y

Shanta S.
(Ms. Shanta Shastry)
Member (A)

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(3)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
CAMP AT NAGPUR

ORIGINAL APPLICATION NO: 506/96

the 20th day of FEBRUARY 2001.

CORAM: Hon'ble Shri S.L. Jain, Member (J)

Hon'ble Ms. Shanta Shastry, Member (A)

Dinkar Laxmanrao Mhaski
R/o 532 Hanuman Nagar,
Nagpur.

... Applicant.

By Advocate Shri R.K. Srivastava.

V/s.

1. Union of India
Ministry of Home Affairs
New Delhi, through its
Secretary.

2. The Director General
Civil Defence, IIInd floor
Express Building,
Bahadurshah Zafar
Marg., New Delhi.

3. The Deputy Secretary (C.S)
North Block, Ministry of
Home Affairs, New Delhi.

4. The Director
National Fire College
Civil Lines, Nagpur.

... Respondents.

By Advocate Shri Govind Mishra.

O R D E R

(Per Ms. Shanta Shastry, Member (A))

The applicant, has been denied ~~vide~~ letter dated 27.3.1996, the benefit of the replacement scale of Rs. 1600 - 2660 in terms of the O.M. dated 19.10.1994 of Government of India, Ministry of Finance. He has therefore prayed as follows:

- i) Direct the respondents to implement the O.M No. 1 9.10.1994 and place the applicant in the pay scale of Rs. 1600 - 2660 with effect from 15.11.1995 onwards i.e. after completion of 4 years of service in the pay scale of Rs. 1400 - 2300.

- ii) Direct the respondents to implement the Government O.M. dated 12.7.1995 read with O.M. dated 23.11.1987 and grant Cadre Review as per the norms fixed, if the OM dated 19.10.1994 is not implemented and place the applicant in the pay scale of Rs. 1600 - 2660 retrospectively.
- iii) Direct the respondents to pay arrears arising therefrom together with an interest @ 18% per annum on the entire amount due to the applicant.
- iv) Grant any other or further relief including costs as may be deemed fit and proper in the circumstances of the case.

2. The applicant was appointed as Artist-Cum-Draftsman in the office of respondent No.4 in the scale of Rs. 1400 - 2300 vide letter dated 15.11.1990. The applicant is XIIth Standard pass and has completed his Draftsmanship Diploma from Industrial Training Institute, Nagpur. It is a Class III post.

3. According to the applicant having completed 4 years' service in the post, he is entitled to be placed in the next higher scale in terms of O.M. dated 19.10.1994. The applicant has contended that even if no post is available, an employee so situated is entitled to be placed in the higher pay scale. The applicant submitted representations on 7.3.1995 and 26.2.1996, but he has been refused the benefit of OM dated 19.10.1994 by the impugned letter dated 27.3.1996. The applicant has further stated that there is no other post in the National Fire College. Therefore the applicant has no scope for promotion or placement in the next higher scale. Further even as per the recommendations of the IVth Pay Commission accepted by the Government, a Government servant is entitled to 3 promotions while in service. The respondents have not acted ^{on this} either.

4. The applicant is relying on the judgement of the Hon'ble Supreme Court of India reported in Labour Industrial cases Vol. 29 of March 1996 at page 604, whereby promotional benefits were extended to ^{all} Draftsmen. This

apart the Government of India have also issued O.M. dated 12.7.1995, ^{vide which the} Department of Personnel and Training, directed

the Cadre Controlling Authorities to implement the cadre review in the light of the guidelines fixed in O.M. dated 23.11.1987. In view of these instructions also the applicant is entitled to be up-graded and placed in the higher scale of Rs. 1600 - 2660. Thus either way the applicant deserves to be granted higher pay scale.

5. The respondents submitted that the O.M. dated 19.10.1994 is not applicable to the present applicant. It is applicable to only those Draftsmen who were in position before 13.5.1982. The applicant was not in the grade of Draftsman as on 13.5.1982. The respondents have further stated that the O.M. dated 13.9.1991 for grant of insitu promotion was also not applicable in the present case because in order to get insitu promotion under the aforesaid O.M. a person has to reach the maximum of the scale of the post and has to stagnate ^{there} for more than one year. The applicant has just joined in 1990 and has not reached the maximum of the scale of the post. According to the respondents, the applicant is not entitled to any relief.

6. The learned counsel for the applicant has produced a number of judgements of the different Tribunals including the circuit Bench at Nagpur. They are in OA 138/1991, decided on 11.7.1991, 779/93 decided on 1.11.1993, 29/90 decided on 13.3.1990 by Hyderabad Bench, 1001/88 decided on 22.6.1989 by the Chandigarh Bench and so on, Where-in the higher ~~replacement~~ scale was granted to the concerned applicants. The applicant has placed strong reliance on the judgements of the Madras Bench of the Tribunal dated 19.7.1991 in OA 260/90 to support his contention that even those who were appointed or promoted after 13.5.1982 were entitled to the benefit of ~~replacement~~ scale.

7. The Madras Bench in turn relied on the decision of Bangalore Bench in OA 110/88. Further the Full Bench also confirmed the decision in OA 677/87 agreeing with the view of the Bangalore Bench and held that denial to fix pay scales to a post would be discriminatory. The applicant therefore contends that he is entitled to the benefit of the ^{higher} pay scale.

8. We have heard the learned counsel for both sides. We have perused various judgements relied upon by the applicant.

9. As a result of an arbitration award the pay scales of Draftsman Grade I, II and III in the CPWD were revised and they were being given the benefit of the revised scale notionally with effect from ^{16.11.1973} and actually from ^{16.11.1978}. Thereafter the Draftsmen of several departments and Ministries rushed to the Tribunal to extend the benefit of the ^{revised} scales to them also. Several Benches of the Tribunal Ruled in their favour and finally the Ministry of Finance O.M dated 13.3.1984 extended the benefits of revised pay scales in the case of Draftsmen of other Departments, Ministry of Government of India, with the condition that the recruitment qualifications should be similar. This matter was again raised in the National Council by the staff side demanding that the experience acquired during the service period should also be taken into consideration for such revision of pay scales instead of considering the basic recruitment qualification alone. It was agreed and O.M. dated 19.10.1984 was issued for those employees who could not avail the benefit of O.M. dated 13.3.1984 because they did not fulfil the basic recruitment qualification. It was stated in the O.M. dated 19.10.1994 that irrespective of the ^{education} qualifications the Draftsmen who had put in certain

number of years would be entitled to the replacement scale of the different grades and once they are placed further promotions can be given against the vacancy in the higher grade and in accordance with the normal provisions of recruitment rules. It was also suggested that all Ministries, departments of Government of India must adopt uniform recruitment rules at the entry stage for all future recruitments. Most of the departments, Ministries of Government of India had accordingly provided replacement scale to the Draftsmen working in their organisations subject to the recruitment rules, being similar to the Recruitment Rules of CPWD Draftsmen. The O.M. of 1994 was for only those who do not fulfil the recruitment qualifications and the same was relaxed.

10. In view of the various judgements cited by the applicant and in view of the O.M. dated 19.10.1994 it is now a well settled proposition that the pay scale of posts of draftsmen under whichever Department / Ministry of Government of India need to be revised to a higher scale. But the respondents' objection is that the O.M. of 19.10.1994 is only a continuation of the earlier O.M. dated 13.3.1984 and now only relaxation has been granted in terms of the recruitment qualifications, therefore this would apply to only those who were in position of draftsmen on 13.3.1984 and not to the applicant who came to be appointed only in 1994. Further the various judgements referred to revision of pay scales on the basis of fulfilment of recruitment qualifications at par with those of CPWD Draftsmen. They mainly dealt with the applicability or otherwise of the O.M. dated 13.3.1984 and not with 19.10.1994 O.M. In our view each case is required to be examined on its own merits.

11. The applicant was appointed in 1990 in the pay scale of Rs. 1400 - 2300. It is a solitary post and does not appear to have been graded. No recruitment rules have been produced showing the prescribed pay scale and the qualifications. It is therefore difficult to know the original prescribed pay scale of the post. Proceeding on the basis that Rs. 1400 - 2300 is the pay scale of the post, we find that the corresponding pay scale of this prior to the recommendations of the 4th Pay Commission was Rs. 330 - 560. This pay scale is that of Draftsmen Grade II. It could be that the original pay scale was Rs. 260 - 430 i.e. of Draftsmen Grade III and later on it was revised to Rs. 330 - 560 in terms of O.M. dated 13.3.1984. But that appears to be a remote possibility. It is an isolated solitary post. It perhaps did not have recruitment qualifications similar to those of CPWD Draftsmen, otherwise the applicant would not have approached for revision of the scale in terms of O.M. dated 19.10.1994, having now become eligible due to relaxation in respect of qualifications. In the light of this discussion the pay scale of Rs. 1400 - 2300 (pre revised Rs. 330 - 560) needs to be revised to Rs. 1600 - 2660 (pre revised Rs. 425 - 700)

12. As the judgement of the Madras Bench of the Tribunal has already laid down in OA No. 260/90 dated 19.7.1991 the question of applicant's not being in position on 13.3.1984 does not arise. We are therefore inclined to hold that the applicant has to be given the benefit of the O.M. dated 19.10.1994 by revising his scale from Rs. 1400 - 2300 to Rs. 1600 - 2660 with effect from the date he has put in 4 years completed service i.e. from 15.11.1994.

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13. The respondents are directed to grant the revised scale to the applicant within a period of two months from the date of receipt of a copy of this order.

14. In the result the OA is allowed. No costs.

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(Ms. Shanta Shastray)
Member(A)

S.L.J

(S.L. Jain)
Member(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI ABENCH: :MUMBAI

REVIEW PETITION NO. 2006/2002
IN
ORIGINAL APPLICATION NO. 506/1996

THURSDAY, THIS THE ~~30~~¹⁰ MAY, 2002

CORAM: HON'BLE SHRI S.L. JAIN. ... MEMBER (J)
HON'BLE SMT. SHANTA SHAstry. ... MEMBER (A)

Dinkar S/o Laxmanrao Mhaski,
R/o 532, Hanuman Nagar, Nagpur. ... Applicant

Versus

1. Union of India,
Ministry of Home Affairs,
New Delhi, through Secretary.
2. The Director General,
Civil Defence, IIInd Floor,
Express Building, Bahadurshah
Zafar Marg, New Delhi.
3. The Deputy Secretary,
North Block, Ministry of
Home Affairs, New Delhi.
4. The Director,
National Fire Service,
Civil Lines, Nagpur. ... Respondents

O R D E R

Hon'ble Smt. Shanta Shastry. Member (A)

This review petition has been filed in respect
of order dated 20.02.2001 in OA No.506/96 by the
original respondents. The OA was allowed.

2. It is seen that the review application is filed
after the prescribed period of 30 days. The respondents
have filed MP for condonation of delay on 08.3.2002 i.e.
after more than a year of the passing of the order. The
respondents have explained that certified copy was
received by them only on 24.9.2001 after reference to

the Ministry of Home Affairs and consultation with the Ministry of Law which took considerable time and therefore, the review could be filed only on 08.3.2002. The respondents have submitted that the delay was not deliberate or due to negligence.

3. We have perused the grounds for the delay. Even after getting the certified copy, the Ministry of Home Affairs took two months to examine the matter and to send it to the Ministry of Law for advice. Even after the receipt of the advice of the Ministry of Law after two months, the respondents have taken further two months to file the review petition. Thus, the review petition has been delayed beyond 30 days period and we are not at all satisfied with the reasons given for filing the review petition so belatedly. Accordingly the review petition is not maintainable and deserves to be rejected.

4. In order to give finality to the matter, the merits of the review petition are also being considered. It has been submitted by the respondents that the judgment of the Madras Bench of the Tribunal dated 19.7.1991 had been relied upon by the Tribunal. However, the facts in that case and the facts in the present case are quite distinct in that in the case before Madras Bench the duties and responsibilities of the applicants therein were similar to those of

draughtsmen in CPWD. The applicants therein were also in grade-II at the time when the OM dated 13.3.1994 was issued. On the contrary in the present case, the qualification of the applicant is definitely lower than any grade of draughtsman in CPWD. The applicant was also not holding the post of draughtsman at the time of issue of the order dated 13.3.1984. The job responsibility of the applicant's post and those of the draughtsman post in CPWD are again not similar. The respondents have also produced a copy of the recruitment rules which were not placed on record at the time of hearing.

5. We have perused the grounds taken by the respondents i.e. the review petitioners. We find that apart from the inordinate delay in filing the review petition, the grounds taken are a repetition of the arguments advanced during the course of the hearing of the OA. The judgment of the Madras Bench was available during the hearing. The respondents had ample opportunity to advance any arguments in that context. It is not that the recruitment rules were not available, but the respondents have failed to produce the same during the hearing. In our considered view therefore, there is no cogent reason to review the order dated 20.02.2001. The review cannot be a ^{u/b} form for rearguing or rehearing the matter. Accordingly, both on ground of

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delay in filing the review petition and on merits the review petition is rejected.

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(SMT. SHANTA SHAstry)
MEMBER (A)

S.L. Jain

(S.L. JAIN)
MEMBER (J)

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dd: 30.5.2002.
order/Judgement despatched
to Applicant/Respondent (s)
on 3.6.2002.

*Ref:
516.*