

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this 19/3 the day of March, 2003

Coram: Hon'ble Mr.Govindan S.Tampi - Member (A)
Hon'ble Mr.K.V.Sachinandan - Member (J)

O.A.736 of 1999

C.M.R. Nair,
Chargeman Grade - II,
Machine Prototype Factory,
Ambernath.
(By Advocate Shri S.V.Marne) - Applicant

Versus

1. Union of India
through the Secretary,
Ministry of Defence,
South Block, New Delhi.
2. The Director General,
Ordnance Factories,
Ordnance Factory Board,
10-A, Auckland Road,
Calcutta.
3. The General Manager,
Machine Tools Prototype Factory,
Ambernath.
(By Advocate Shri R.R.Shetty) - Respondents

O.A.737 of 1999

Shri R.P.Desai,
Chargeman Grade- II
Machine Prototype Factory,
Ambernath.
(By Advocate Shri S.V.Marne) - Applicant

Versus

1. Union of India
through the Secretary,
Ministry of Defence,
South Block, New Delhi.
2. The Director General,
Ordnance Factories,
Ordnance Factory Board,
10-A,Auckland Road,
Calcutta - 700 001.
3. The General Manager,
Machine Tools Prototype
Factory, Ambernath.
(By Advocate Shri R.R.Shetty) - Respondents

O R D E R

By Hon'ble Mr.K.V.Sachinandan, Member (J) -

These cases are similar in nature and the issues involved in both the cases are one and the same and the matter has been argued in common by the learned counsel and, therefore, they are being disposed of by common order with the consent of parties.

2. O.A.736 of 1999 - The grievance of the Applicant is that although he has been placed in the scale of Rs.425-700/(Rs.1400-2300) w.e.f. 13.5.1982, the Applicant has not been assigned seniority in the grade of Rs.425-700/- from that date, but his seniority is fixed w.e.f. 31.7.1997. The Applicant who was initially working as Draughtsman in the scale of Rs.330-560/was placed in the pay scale of Rs.425-700/- w.e.f. 31.5.1982 consequent upon the judgment of the Hon'ble Supreme Court in the case of Union of India Vs. Debasish Kar and others, Civil Appeal No.1432 of 1995 decided 20.7.1995. The Respondents thereafter converted the post of Draughtsman to the post of Chargeman Grade II as the pay scale of Draughtsman and Chargeman Grade II were identical i.e.Rs.425-700/- (Rs.1400-2300). Subsequently Respondent no.2 issued orders dated 26.10.1998 to fix the seniority of Chargeman Grade II on the basis of the date from which they were holding the pay scale of Rs.425-700 (Rs.1400-2300). The Respondents failed to fix the seniority of Chargeman Grade II w.e.f. 13.5.1982. The Applicant is entitled to count his seniority in the grade of Chargeman Grade-II w.e.f. 13.5.1982 and he is further entitled to grant of promotion as Chargeman Grade - I. The Respondents have also issued order

dated 19.4.1993 by which the Draughtsman in the scale of Rs.1400-2300/- have to be transferred as Chargeman Grade II w.e.f. 10.5.1993. The Applicant is therefore entitled to be treated as Chargeman Grade II w.e.f. 10.5.1993. The Respondents have further passed orders dated 9.3.1994 and 24.8.1994 stating that Chargeman Grade-II and equivalent in the scale of Rs.1400-2300/- before 1.1.1983 should be promoted as Chargeman Grade - I w.e.f. 12.9.1994. Therefore, the Applicant is also entitled to be promoted as Chargeman Grade-I w.e.f. 12.9.1994. Aggrieved by the inaction on the part of the Respondents, the Applicant has filed this OA seeking the following relief:-

- (a) That this Hon'ble Court may be graciously pleased to call for the records of the case from the Respondents and after examining the same, quash and set aside the impugned orders dated 1.2.1999, 19.2.1999 and 16.7.1999.
- (b) This Hon'ble Tribunal may further be pleased to direct the Respondents to fix the seniority of the Applicant in the grade of Chargeman Grade II, w.e.f. 10.5.1993.
- (c) This Hon'ble Tribunal may further be pleased to direct the Respondents to promote the Applicant as Chargeman Grade - I w.e.f. 12.9.1994 with all consequential benefits.
- (d) Cost of the Original Application be provided for.
- (e) Any other or further orders as to this Hon'ble Tribunal may deem fit and necessary in the circumstances of the case may be passed.

3. O.A.737 of 1999 - The grievance of the Applicant in this OA also is that he has not been assigned seniority from the date he has been placed in the scale of Rs.425-700/(Rs.1400-2300) w.e.f. 9.7.1984 but his seniority has been fixed w.e.f.

31.7.1997. The Applicant was initially working as Draughtsman in the scale of Rs.330-560/-, was placed in the pay scale of Rs.425-700/- w.e.f. 31.5.1982 as in OA 736/99 consequent upon the decision of the Hon'ble Supreme Court in the case of Debasish Kar (supra). The Respondents converted the post of Draughtsman to the post of Chargeman Grade II as the pay scale of Draughtsman and Chargeman Grade II are identical. Subsequently, Respondent no.2 issued orders dated 26.10.1998 to fix the seniority of Chargeman Grade II on the basis of the date from which they were holding the pay scale of Rs.425-700/- (Rs.1400-2300). However, the Respondents failed to fix the seniority of the Applicant in the grade of Chargeman Grade-II w.e.f. 9.7.1984. As in other case, the Respondents have issued order dated 19.4.1993 by which the Draughtsman in the scale of Rs.1400-2300/- have to be transferred as Chargeman Grade-II w.e.f. 10.5.1993. Therefore, the Applicant is entitled to be treated as Chargeman Grade-II w.e.f. 10.5.1993. the Respondents have passed the order that the persons who are in the pay scale of Rs.1400-2300/- after 1.1.1993 should be promoted as Chargeman Grade-I. Aggrieved by the inaction on the part of the Respondents, the Applicant has sought similar relief in the other OA which is as follows:-

- (a) That this Hon'ble Court may be graciously pleased to call for the records of the case from the Respondents and after examining the same, quash and set aside the impugned orders dated 19.2.1999 and 16.7.1999.
- (b) This Hon'ble Tribunal may further be pleased to direct the Respondents to fix the seniority of the Applicant in the grade of Chargeman Grade-II w.e.f. 10.5.1993.

(c) This Hon'ble Tribunal may further be pleased to direct the Respondents to promote the Applicant as Chargeman Grade-I w.e.f. 12.5.1997 with all consequential benefits.

(d) Cost of this Original Application be provided for.

(e) Any other or further order as to this Hon'ble Tribunal may deem fit and necessary in the circumstances of the case may be passed.

4. In OA 737/99, even though the Respondents have filed reply-statement it was not accepted on the file since it was filed belatedly. However, in OA 736/99, it has been filed in time. Since issue involved are common and the Respondents' counsel has argued at length, we are adopting the reply-statement filed in OA 736/99 in both cases. The Respondents had submitted a detailed reply-statement submitting that the Applicants were sought to be promoted and transferred to the post of Chargeman Grade-II w.e.f. 10.5.1993 vide order dated 19.4.1993. The question of granting seniority to the Applicants in the post of Chargeman Grade-II despite the order dated 19.4.1993 does not arise. As the Applicants refused the transfer/promotion to the post of Chargeman Grade-II from the post of Draughtsman, the Applicants cannot be equated with those persons who were their colleagues and juniors who have accepted promotions. The post of Draughtsman has been converted/re-designated as Chargeman Grade-II w.e.f. 31.7.1997. The question of re-designation/conversion of Draughtsman to the post of Chargeman Grade-II is a policy decision of the Government of India and that the Applicants cannot claim preponing of the conversion/redesignation of the post of Draughtsman to the post of Chargeman Grade-II w.e.f. 10.5.1993. Besides they have taken the plea of limitation. The Applicants refer to a decision of

the Hon'ble Supreme Court in the case of Debasish Kar (supra) will not squarely apply in this case. In that case the Draughtsman in the scale of pay of Rs.330-560/- were granted upgradation to the scale of pay of Rs.425-700/-. The said decision had already been implemented in the case of the Applicants and they have been granted the higher pay scale of Rs.425-700/ w.e.f. 13.5.1982. The question of getting any further benefit of upgradation from a date before 31.7.1997 when the policy decision of converting/redesignating the post of Draughtsman to the post of Chargeman Grade II does not arise. The Respondents submitted that before his placement in the scale of Rs.425-700/ the Applicants were promoted on transfer to Ammunition Factory, Kirkee along with other employees in compliance with the Ordnance Factory Board's letter dated 19.4.1993. The Applicants had refused the said promotion on transfer. The said transfer was ordered as there was no vacancy available in the Factory of Respondent no.3. The incumbents are normally liable for service in the same Factory or Office in Ordnance Factories Organisation, but this is without prejudice to the right of the Government in public interest to transfer the Applicant to the same or equivalent post in any other Factory or Office in the Ordnance Factory organisation. The number of individuals transferred to different Factories in their existing grade to join the Factory to which they have been ordered for transfer as Chargeman Grade II (T) has been filed as an Annexure. The sequence of transfers is from juniormost upwards in the order in which the Factories to

which transfers have been ordered. The said promotion order on transfer was issued by the competent authority prior to revision of the scale of Rs.425-700/- and redesignation was done based on Ordnance Factory Board's order. As there was no vacancy available at MPF, the Applicant was accordingly transferred to AFK as Chargeman Grade-II (T). The applicants had refused the promotion on transfer. He therefore cannot at this stage request for consequential benefits of promotion to which he had already refused. The Applicants have to be blamed themselves. The Applicants along with other employees were given seniority and promoted to Chargeman Grade-I w.e.f. 10.5.1993 but refused to move. Therefore, the Applicants have got no right to claim seniority of Chargeman Grade-II w.e.f. 10.5.1993 and Chargeman Grade I w.e.f. 12.9.1994 as contended in the OA. It is further contended that merely by stating that administrative/executive order are legal orders does not confer any right on the Applicants.

5. We have heard Shri S.V.Marne learned counsel for the Applicants and Shri R.R.Shetty learned counsel for the Respondents in both OAs. The learned counsel have taken us through various pleadings of the case. We have perused the records and materials placed on the file. The learned counsel for the Applicant argued that the Applicants are entitled to fixation of their seniority in the grade of Chargeman Grade-II as per the order dated 19.4.1993 and also in the Grade of Chargeman Grade-II w.e.f. 10.5.1993 and Chargeman Grade I w.e.f.

12.9.1994 consequent upon the revision of seniority as Chargeman Grade II. The non-grant of seniority to the Applicants w.e.f. 13.5.1982 is discriminatory and unconstitutional and is violative of Articles 14, 16 and 21 of the Constitution. The learned counsel for the Respondents on the other hand submitted that redesignation/conversion of the post of Draughtsman to the post of Chargeman Grad-II is a policy decision of the Government of India and that the applicants cannot claim preponing of the conversion/redesignation of the post of Draughtsman to the post of Chargeman Grade-II. The cause of action to the Applicants arose as far back as in 1993 and this OA is filed after a long delay of seven years and is barred by limitation. Having accepted the order of transfer, the Applicants are not justified in claiming consequential benefits and if that is granted, the seniority list, promotion list and other service benefits given to other employees will stand unsettled and great prejudice will be caused to other benefitted persons. Obviously it is also further argued that those aggrieved persons are not made party to these proceedings and the OAs are bad for non-joinder of necessary parties.

6. We have given careful consideration to the pleadings and arguments advanced by their learned counsel. The relief sought for is a direction from this Tribunal to the Respondents to treat the Applicants as Chargeman Grade-II w.e.f. 10.5.1993 and further

as Chargeman Grade - I w.e.f. 12.5.1997. The Applicants were sought to be promoted and transferred to the post of Chargeman Grade II w.e.f. 10.5.1993 vide order dated 19.4.1993. The Applicants refused the transfer/promotion to the post of Chargeman Grade-II from the post of Draughtsman. But their colleagues/juniors had accepted the promotion. As per the restructuring scheme, the Draughtsmen have been converted/redesignated as Chargeman Grade II w.e.f. 31.7.1997. Therefore, the Applicants are occupying the post of Chargeman Grade-II w.e.f. 31.7.1997. As there was no vacancy available at MPF the Applicants were accordingly transferred to HEF as Chargeman Grade-II (T). The Applicants refused the promotion on transfer. Therefore, we are of the view that they cannot at this stage request for consequential benefit of promotion to which they have already refused. In other words, if one relinquishes their rights they cannot be relieved. The decision for restructuring the cadre by redesignation of Draughtsman to that of Chargeman Grade-II was a policy decision of Government of India and the Applicants cannot challenge the same. The decision was taken to redesignate and restructure the cadre from 31.7.1997 it will have only prospective effect. The claim of the Applicants seeking the conversion w.e.f. 10.5.1993 by filing this OA in 1999 in our view cannot be sustained. Because any Scheme, rule, will have only prospective effect. We also note that an upgradation of higher pay scale of Rs.425-700 was granted to the Applicants w.e.f. 9.7.1984 on the basis of the Hon'ble

Supreme Court's ruling in the case of Debasish Kar (supra). Therefore, a further upgradation before 31.7.1997 cannot arise. Considering the above facts we are of the view that the claim of the Applicants is not tenable or sustainable and the OA does not have any merits.

7. The Applicants are claiming a benefit of 1993 and the OA is filed in 1999. As per the Central Administrative Tribunals Act, the aggrieved person should approach the Court within one years time and it is not done in this case and the Applications are barred by limitation and on that count also the Applications do not merit.

8. On the given facts it is clear that the Applicants are challenging the restructuring process which is a policy decision of the Government. The Hon'ble Supreme Court in the decision of Commissioner, Corporation of Madras Vs. Madras Corporation Teachers' Mandram and ors., 1997 (1) SCC 253 has held that Courts/Tribunals cannot interfere in the matters of government policy and beyond the scope of Sections 14 and 15 of the Administrative Tribunals Act, 1985. Therefore, we are of the view that this Tribunal will not be justified in interfering in these cases since they are challenging the decision of the Government. We also find that there is no reason to interfere or set aside the impugned orders.

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9. In the conspectus of the facts we are of the view that the OAs 736/99 & 737/99 do not merit, they are only to be dismissed, we do so accordingly. The parties will bear their own costs.

(K.V.Sachidanandan)
Member (J)

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(Govindan S.Tampi)
Member (A)