

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 734/1999

Date of Decision: 8.4.2003

Kasim Saheb Dastigri Trasgar Applicant(s)
Shri S.P. Saxena Advocate for Applicants

Versus

Union of India & ors. Respondents
Shri. R.R. Shetty. Advocate for Respondents

CORAM: HON'BLE SMT. SHANTA SHASTRY. MEMBER (A)
HON'BLE SHRI K.V. SACHIDANANDAN. MEMBER (J)

1. To be referred to the reporter or not? ✓
2. Whether it needs to be circulated to other Benches of the Tribunal?
3. Library. ✓

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(SMT. SHANTA SHASTRY)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO. 734/1999

THIS THE 9TH DAY OF APRIL, 2003

CORAM: HON'BLE SMT. SHANTA SHASTRY. ... MEMBER (A)
HON'BLE SHRI K.V. SACHIDANANDAN. ... MEMBER (J)

Kasissm Saheb Dastgir Trasgar,
Retired Tracer, 284/1,
Somwar Peth,
Pune-411 011. ... Applicant

By Advocate Shri S.P. Saxena.

Versus

1. Union of India,
through the Secretary,
Ministry of Defence,
New Delhi-11.
2. The Chief Engineer,
Pune Zone,
Pune-411 001.
3. The Commander Works Engineer,
Pune-411 001. ... Respondents

By Advocate Shri R.R. Shetty.

O R D E R
Hon'ble Smt. Shanta Shastry. Member(A)

The following reliefs have been sought by the applicant in this OA.

- (a) To declare that the applicant is entitled on the basis of the judgment of various judgments referred above, to be placed in the scale of Rs.330-560 from the date he was inducted as tracer and to 1200-2040 w.e.f. 01.01.1986.
- (b) To direct the respondents to refix the pay of the applicant in the above said scale from

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1.1.86 and to pay all the other consequential benefits including the arrears arising out of revised pay fixation.

- (c) To direct the respondents to recalculate all the retirement and pensionary benefits for the applicant & to pay the arrears out of the same."

2. The applicant was appointed in 1953 under the respondents and was later on promoted as Ferro Printer. He was subsequently promoted to the post of tracer in the MES with effect from 01.01.1984. He was placed in the pay scale of Rs.260-400 (pre revised) with effect from 01.01.1985. The same was revised to Rs.1200-2040 with effect from 01.01.1986.

3. The applicant submits that due to an award of arbitration, pay scales of draftsman in the CPWD of the Government of India were revised and on the basis of such revised scale of pay scales of draftsman in other departments of Government of India were also revised. The pay scale for the draftsman grade-III was revised to Rs.1200-2040 with effect from 01.01.1986. The applicant submits that in any event the draftsman grade-III was redesignated as tracer by the Ministry of Defence and therefore, the tracer in MES has been equivalent to the post of draftsman grade-III in CPWD.

4. According to the applicant, the respondents did not give the revised scale of Rs.1200-2040 to the tracers in MES on the plea that they were working as tracers in MES and not as draftsman grade-III and the recruitment qualification of tracer in MES and draftsman in grade-III in CPWD are quite different. A number of tracers of MES being aggrieved and working under the respondents under the Ministry of Defence filed OA 538/91 before the Bombay Bench of the Tribunal. The applicant submits that all the applicants in the aforesaid OA were similarly placed as the present applicant. They too were not having the recruitment qualification at par with draftsman grade-III of CPWD, yet the OA was allowed vide order dated 11.7.91 and the tracers who were applicants in the aforesaid OA were given the scale of Rs.330-560 with effect from 01.5.1982 as per the award, further revised to Rs.1200-2040 with effect from 01.01.1986. The above judgment of the Tribunal was not challenged by the respondents and attained finality as far as the question of scale of pay for draftsman in MES is concerned. The judgment was also implemented by the respondents. Further, some other tracers of MES filed similar applications before the Tribunal at Calcutta, Chandigarh, Hyderabad and New Delhi. All these applications were allowed and the tracers were granted the scale of pay of Rs.1200-2040 at par with that of the draftsman Grade-III of CPWD. One of the judgments of the Calcutta Bench of the Tribunal

was challenged before the Supreme Court by the respondents through SLP, but the same was rejected. The Jodhpur Bench of the CAT also has granted the scale of pay of Rs.1200-2040 to the tracers of MES vide order dated 22.7.1998 in OA 4161/94.

5. The applicant submits that he retired on 31.12.1991 and when he came to know about the granting of pay scale of Rs.1200-2040 to tracers of MES only recently and therefore he sent a notice through his lawyer to the respondents requesting that his pay may be refixed in the scale of Rs.1200-2040 from 01.01.1986 and subsequent retirement pensionary benefits be recalculated and the arrears of amount arising out of it. He did not receive any reply, therefore, he has approached this Tribunal.

6. The applicant's main contention is that in OA No.138/91 the applicants, who were similarly placed to the present applicant were granted the benefit of the revised scale of pay of Rs.330-560 and accordingly it was given to them notionally with effect from 01.5.1982 and arrears were granted from November 1983. But since the applicant was not a party in OA 138/91 the respondents did not place him in the pre-revised scale of Rs.330-560 with effect from 01.1.1986 and he continued to get his pay in the scale of pay of Rs.260-400 i.e. Rs.950-1500. Several Benches of this

Tribunal have also pointed out for extending the benefit of Arbitration Award and for placing in the scale of Rs.330-560 of the tracers with effect from 01.5.1982 or from the date when they became eligible whichever is later along with all consequential benefits.

7. According to the applicant all the judgments rendered by the Tribunal are judgments in rem and they are applicable to each and every person working as tracer in MES whether such persons approached the Tribunal or not. The applicant relies on the judgments of the Supreme Court in the case of Inderpal Yadav Vs. Union of India, wherein it has been observed that applicant should not be driven to the court when benefit is already granted to similarly placed persons. The respondents ought to have taken action on their own to grant the revised pay scale to the applicant, but they failed to do so.

8. The respondents have opposed the prayer. They submit that the applicant was initially inducted as Chowkidar on 01.4.1953 and not as tracer as alleged by him in the OA. He was later on promoted to the grade of Peon with effect from 25.5.1961, Daftary with effect from 02.7.1973, Ferro Printer with effect from 21.8.1982 and tracer with effect from 24.5.1986 and finally retired on 31.12.1991 as tracer. According to the respondents, the application filed by the applicant is

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grossly timee barred with latches. The applicant has approached eight years after his retirement and this itself is enough to dismiss the application. Learned counsel for the respondents relies on the judgment in the case of Bhoopsingh Vs. Union of India [JT 1992 (3) 332] wherein it has been observed that the judgment and orders of the court in other case do not give cause of action. Cause of action has to be reckoned from the actual date. Similarly in State of Karnataka & Others Vs. S.M. Kotrayya & Others [1996 SCC (L&S) 1488] it has been observed that explanation should be given for the delay with occasion after expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should satisfy itself whether the explanation offered was proper. In the instant case, the explanation offered was that he came to know of the relief granted by the Tribunal in August, 1989 and filed the petition immediately thereafter, this was not a proper explanation at all. It was held that the Tribunal was wholly unjustified in condoning the delay. The respondents also referred to V.K. Mehra Vs. The Secretary, Ministry of I & B, Delhi [ATR 1986 (1) CAT (Principal Bench) 203]. The respondents also submit that in some earlier cases in OA 289/97 in OP Juhari Vs. Union of India & Others and OA No.731/94 in L.V. Subba Rao Vs. Union of India & Others the very same Tribunal has dismissed the OA after considering the time bar aspect. According to the respondents the award of Board

of Arbitration for draftsman of CPWD was only for directly recruited draftsman i.e. Tracer/ Draftsman III, Draftsman II and Draftsman-I and not to the promotees. Further, in terms of the Government of India, Ministry of Defence letter dated 15th September, 1995 the applicant is not entitled for upgradation of pay as per award of CPWD because he does not fulfil any of the conditions set out therein. In para 3 of the letter, it has been provided as follows: Incumbents in position before 13.5.1982 may be placed in the revised scale of pay as and when they complete/ completed the length of service in the respective grades and subject to condition indicated below. In the case of draftsman III the individual~~s~~ would get the revised scale from the date on which they complete the required length of service, namely 7 years. Further in the case of those who became draftsman after 13.5.1982 still 7 years would be ^{required} to be completed from the date of becoming tracers/ draftsman. In the case of the present applicant his service~~s~~ as tracer was only of 5 years 7 months and 7 days and therefore he is not entitled to any benefit of the pay scale of Rs.330-560. The respondents further submit that redesignation order from tracer to draftsman-III came into effect on 15th September, 1995 and on which day the applicant was no longer in service.

9. Similarly according to the respondents, the

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judgment of this Tribunal dated 11.7.1991 in OA 138/91 is not at all applicable to the applicant as the applicants in the aforesaid OA were directly recruited draftsman in MES. Even in OA No.434/93 which has been wrongly shown relating to Jodhpur Bench by the applicant, the applicants were directly inducted to the post of tracer and they were not promotees like the applicant. In view of this, the applicant is not entitled to the revised scale of pay of Rs.330-560 and Rs.1200-2040 (revised).

10. The applicant has also filed rejoinder pointing out the facts in OA 494/93, there also the applicants were not directly appointed as tracer. Some of them were appointed as tracers whereas others were promoted to the post of tracer from lower post of Ferro Printer etc. Also the judgment in OA 434/93 does not restrict its applicability to only such draftsman who are directly appointed to the post. It has been made applicable to the promotee tracers also. The respondents in the sur-rejoinder again refuted the statement of the applicant that some of the applicants in OA No.434/93 were not directly appointed as tracer, but were promoted.

11. We have heard the learned counsel for the applicant as well as the respondents. The applicant's contention is, because similarly placed tracers in the MES were allowed the revised pay scale of Rs.330-560 notionally with effect from 13.5.1982 and actually from November, 1983, the applicant being similarly placed

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also should be granted the benefit of the same. The respondents have opposed the OA on two grounds namely limitation and latches and on the ground that the applicant does not fulfil the requirements of the letter dated 15.7.1995. According to the respondents the OA is barred by limitation and latches because the applicant has approached this Tribunal in 1999 when the original cause of action arose in 1984 and the judgment in OA No.138/91 was given on 11.7.1991. In our considered view, no doubt, there is a delay in this matter, the applicant did not take any steps to approach this Tribunal even after the judgment of 11.7.1991 was pronounced. He has approached eight years later. However, we find that all the tracers in MES were allowed the revised pay scales of Rs.330-560. They were all similarly placed to the applicant and not one, but several Benches of this Tribunal allowed the benefit to be granted to Tracers in MES from different parts of the country. In view of this position as rightly pointed out by the applicant, the respondents themselves ought to have extended the benefit of the judgment to the applicant without his being made to run to the court. Further this is a matter of pay fixation. It has already been held by the Hon'ble Supreme Court in the case of M.R. Gupta & Others Vs. Union of India [1995 (5) SCALE 29 (SC)] that the claim to be paid correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary, computed correctly in accordance with the rules and

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therefore, limitation does not come in the way in such matters, however, the arrears can be restricted. In our considered view therefore, in the present case, the delay needs to be condoned and is condoned accordingly. It is to be seen whether the letter dated 15.7.1995 as quoted by the respondents is to be applied in the case of the applicant. The aforesaid letter came to be issued in the context of the OM dated 19.10.1994 from the Ministry of Finance whereby the Ministry of Defence allowed the granting the benefit of the revised pay scales to the draftsman irrespective of the recruitment qualification prescribed for the post in other Ministries, Departments of Government of India. While the OM of 15.10.1984 had insisted on the recruitment qualification of draftsman in other Departments, Ministries of Government of India being on par with those of the draftsman in CPWD. Going by the letter of 15.7.1995 no doubt the applicant does not fulfil the condition of 7 years of service after being promoted to the post of tracer. However, the applicant has contended that in his case, the OM of 1984 is applicable as was made applicable to other tracers in MES all over the country and therefore, it goes without saying that the recruitment qualification of the tracers in MES had already been accepted at par with the recruitment qualification in CPWD. We have perused the judgment in OA No.434/93 which had relied on the judgment in OA 138/91. A perusal of the same shows that all the tracers in MES who had approached the Tribunal in the aforesaid OA were granted the revised scale of

Rs.330-560 as for draftsman Grade-III. We have also seen that even in OA 138/91 there were tracers, who had been appointed much later i.e. as late as in 1991 and they were also granted the benefit of the revised pay scales. Therefore, the contention of the respondents that since the applicant was appointed after 13.5.1982 and that he was a promotee, and is therefore, not covered by the orders of the 15.7.1995 or the earlier orders does not hold good. Apart from limitation several grounds which were taken by the respondents in the aforesaid OA of 434/93 were the same as the one taken now by the respondents regarding equal pay for equal work, the qualification being not the same etc. In OA No.138/91 one Shri M.D. Chokhanere Draftsman III now tracer was appointed in that grade on 25.5.1991 and he was given revised scale with effect from 01st November, 1983 vide order dated 20th February, 1993. The respondents have also pointed out that there are other judgments of the Tribunal, one of them being that of the Ernakulam Bench wherein the OA was dismissed. We find from that OA No.400/91 that there the question was of draftsman Grade-II. Therefore, there was definitely a difference in the recruitment qualification of the draftsman Grade-II in CPWD and the draftsman in Navy. Even the qualification prescribed for draftsman Grade II in MES was compared with that of the Navy and it was found that the prescribed qualification for draftsman grade-II was higher than those prescribed for draftsman of the Navy.

In our considered view, in the light of the overwhelming number of judgments rendered by different benches of the Tribunal and also in view of the judgment of the Calcutta Bench having become final after dismissal of the SLP by the Supreme Court, the applicant cannot be denied the revised pay scale of Rs.330-560 / 1200-2040 and the applicant is entitled to the revised pay scale of Rs.330-560 i.e. replacement scale of Rs.1200-2040 with effect from the date he was promoted as tracer. We do not find that there is any distinction made between direct recruits and promotees. The respondents shall therefore, grant the applicant the revised pay scale ^{from 1-1-1986 &} Since the applicant has approached this Tribunal very belatedly the arrears arising out of granting of revised pay scales shall be restricted to only one year prior to filing of this OA. The exercise shall be carried out within a period of three months from the date of receipt of copy of this order. OA is allowed. No costs.



(K.V. SACHIDANANDAN)
MEMBER (J)



(SMT. SHANTA SHASTRY)
MEMBER (A)

Gajan

MP No. 509/04
For Extension
of time fixed
on 30/7/2004

4/10/2004-6

CP-87/2003
MP-509/2004

Q
order issued
on 6/9/04
KMP

Applicant by Shri S.P. Saxena.
Respondents by Shri R.R. Shetty.
learned counsel for the respondents
stated that the order dated
8/4/2003 has been complied
by the respondents, Shri Saxena
learned counsel for the
applicant has also corroborated
the facts of the compliance
of the orders.

In view of the above facts,
the MP-509/2004 is not
maintainable.

CP-87/2003 - Notices on
CP-87/2003 is discharged.

Q (order)
for 509/04

(Muzaffar Husain)
M(J)

(A.K. Agarwal)
V.C.

slp.