

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 36 of 2000.

Dated this , the 06th day of May, 2003.

Shri Mahendra Pandey & 2 Others,

Applicants.

Shri R. P. Saxena,

Advocate for
Applicant.

VERSUS

Union of India & Others,

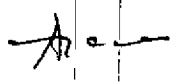
Respondents.

Shri V. S. Masurkar,

Advocate for
Respondents.

CORAM : Hon'ble Shri A. S. Sanghvi, Member (J).
Hon'ble Shri Shankar Prasad, Member (A).

- (i) To be referred to the Reporter or not ?
(ii) Whether it needs to be circulated to other
Benches of the Tribunal ?
(iii) Library.


(A. S. SANGHVI)
MEMBER (J).

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Hon'ble Shri Shankar Prasad, Member (A).

1. Shri Mahendra Pandey,
Highly Skilled Grade-I,
Naval Dockyard, Centre-11,
Mumbai 400 023.
2. Shri Chaitanya Tejpal,
Highly Skilled Grade-I,
Centre 45, Naval Dockyard,
Mumbai 400 023.
3. Shri Manuel Rajan,
Highly Skilled Grade-I,
Centre 48, Naval Dockyard,
Mumbai - 400 023.

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Applicant.

(By Advocate Shri R. P. Saxena)

VERSUS

1. Union of India through
The Secretary,
Ministry of Defence,
South Block,
New Delhi - 110 011.
2. The Chief of the Naval Staff,
Naval Headquarters,
New Delhi - 110 011.
3. The Admiral Superintendent,
Naval Dockyard,
Mumbai - 400 023.

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Respondents.

(By Advocate Shri V. S. Masurkar)

O R D E R

PER : Shri A. S. Sanghvi, Member (J).

The Applicants have moved this Original Application
seeking the following reliefs :

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- "8.01. Hold and declare that the impugned order dated 3.2.1998 is liable to be quashed and set aside, being arbitrary and illegal.
- 8.02. Hold and declare that the anomaly between the pay drawn by a junior and a senior has arisen solely due to drawal of increments in pre-revised and revised scales of pay, it is just and fair that anomaly should be set right.
- 8.03 Hold and declare that the applicants are entitled for raising their pay to Rs. 1,260/- as on 1.1.1986 and Rs. 5,000/- as on 1.1.1996 to the level of the pay received by their junior Shri S.K. Verma, due to fortuitous circumstances, with arrears of pay w.e.f. 1.1.1986.
- 8.04 To order cost of the case."

2. The applicants claim that they are senior to one Mr. S.K. Verma. However, an anomaly has arisen in their pay scale in view of the appointment of Mr. Verma in the revised pay scale and ^{~ then} ~~while~~ drawing increments in the pre-revised pay scale. According to them the pay scale for the Highly Skilled Grade-I in the scale of Rs. 1320-2040/- had been revised to Rs. 4000-6000/- w.e.f. 01.01.1996. Mr. S. K. Verma was appointed in the post of Highly Skilled Grade-II on 10.01.1986 in the revised scale of Rs. 1200-2040/- and had received two advance increments resulting into the fixation of his pay at Rs. 1260/- on 01.01.1986. However, since the applicants were appointed in the scale of Rs. 330-530/-, in the revised pay scale their pay was fixed at Rs. 1,230/- as on 01.01.1986. This anomaly had continued when the pay fixation in the revised pay scale of Rs. 4000-6000/- was carried out w.e.f. 01.01.1996. The pay of Mr. Verma has been fixed at Rs. 5000/- and that of applicants had been fixed at Rs. 4,900/-. The applicants have contended that since their junior is getting more salary their pay should be stepped up at par with their junior's pay and they should also be placed in the pay of Rs. 5000/- w.e.f. 01.01.1996.

3. The respondents have rejected the claim of the applicants and in their reply have contended, inter alia, that the anomaly has occurred on account of fortuitous circumstances and not on account of the grounds mentioned in F.R. 22 and as such the anomaly cannot be set aside. According to them, since none of the provisions of Fundamental Rules is applicable to the facts of the instant case, the applicant cannot claim any right to get his pay stepped up with that of Mr. Verma. They have prayed that the O.A. be dismissed with cost.

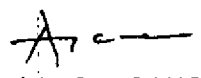
4. We have heard the Learned Counsel for both parties and duly considered the rival contentions. The relief clause itself suggests that the receipt of higher pay by Mr. S. K. Verma, the junior of the applicants, has been due to the fortuitous circumstances and not on account of any anomaly visualized by F.R. 22. Mr. R. P. Saxena, Learned Counsel for applicants has fairly conceded that none of the rules of F.R. is applicable to the facts of the instant case. He has also conceded that provisions of F.R. 22 are not applicable and not attracted to the facts of the instant case but according to him, since the junior of the applicants is getting more pay, the applicants are required to be given the stepping up to remove this anomaly. It is a settled position that stepping up of pay can be given only in the case where the provisions of F.R. 22(C) or 22(1)(a)(i), as the case may be, are attracted. Admittedly, here the anomaly has arisen because of the appointment of seniors in the old scale and that of juniors in the revised scale. The applicants were appointed in the scale of Rs. 330-560/- and on revision of their pay in the scale of Rs. 1200-2040/- their pay came to be fixed

at Rs. 1,230/-. Their junior, Shri S. K. Verma, was appointed on 10.01.1986 in the revised scale of Rs. 1200-2040/- and on giving two increments his pay was ^{fixed} ~~revised~~ at Rs. 1,260/-. The applicant had already received two advance increments at the time of pay fixation but because his junior had come to be appointed later on in the revised scale, due to this unforeseen circumstances he is getting more pay than the applicants. In a similar case in the case of Union of India & Another V/s. R. Swaminathan reported in 1997 (2) SC SLJ 383 the Supreme Court has refused to step up the pay of the senior to the level of the junior. In that case the junior was given ad hoc promotion earlier than his senior and his pay was fixed taking into consideration the earned increments in the higher pay scale to the post to which he was promoted on account of his past services and also his previous pay in the promotional post. On regular promotion of the junior, the junior was getting higher pay than the senior. When the senior asked for the stepping up of his pay to the level of his junior, the ^{supreme court} ~~senior~~ held that increased pay drawn because of ad hoc officiation or regular service rendered by him in the higher post for periods earlier than the senior is not an anomaly because pay does not depend on seniority alone nor is seniority alone a criteria for stepping up of pay. The stepping up can be given only if the case is covered by F.R. 22(1)(a)(i). In the instant case, the difference in the pay of a juniors and that of senior is not on account of application of F.R. 22(C) or 22(1)(a)(i). The higher pay received by junior is on account of fortuitous

circumstances and as such this cannot be said to be an anomaly between the pay. Since the provisions of F.R. 22 are not attracted to the facts of the instant case, no question of giving stepping up to the applicants arise. We, therefore, do not find any merit in this case.

5. The O.A. is rejected with no order as to costs.


(SHANKAR PRASAD)
MEMBER (A).


(A.S. SANGHVI)
MEMBER (J).

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