

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this the 18th day of February, 2002

Coram: Hon'ble Mr. Justice Ashok Agarwal - Chairman
Hon'ble Mrs. Shanta Shastry - Member (A)

O.A. 736 OF 2000

1. P.P. Makeswar,
2. B. Rath
3. C.N. Mane
4. M. Brito Raphael
5. Ku.K. Sreeja
6. D.B. Shirode
7. Ku.M. Habeeba
8. H.V. Joshi
9. L.J. Poojari
10. C.D. Fokane
11. T.G. Lothe
12. G. Srikanth
13. Balram Jha
14. Sunita V. Pagare
15. S. Velumurgan
16. S.S. Kamble
17. Sanjay Kumar
18. S.K. Sarode
19. A.D. Surodkar
20. V.K. Agnihotri
(By Advocate Shri G.S. Walia) - Applicants

VERSUS

1. Union of India
through the Deputy Secretary to
the Government of India,
Department of Atomic Energy,
C.S.M. Marg,
Mumbai - 400 039.
2. The Personal Officer,
Government of India,
Bhabha Atomic Research Centre,
Personnel Division,
Central Complex, Trombay,
Mumbai.
(By Advocate Shri R.R. Shetty on behalf of
Shri R.K. Shetty) - Respondents

ORAL ORDER

By Hon'ble Mrs. Shanta Shastry, Member (A) -

The applicants working in the Department of Atomic Energy are aggrieved by their reduction in rank from Tradesman 'D' to Tradesman 'C' by the impugned letter dated 25.10.1999.

2. The brief facts are that the applicants were initially appointed as Tradesman 'D' in the pay scale of Rs.4000-6000/- in the Bhabha Atomic Research Centre, Trombay after completion of the prescribed training of two years. The applicants 5 to 15 were appointed w.e.f. 12.2.1998, applicants 16 to 19 from 7.4.1998 and the applicant at serial no.20 was appointed on 13.4.1998. Their probation period was declared closed and approved as such vide order dated 8.4.1999. According to the applicants their pay was fixed at Rs.4500/- vide order dated 13.10.1999 as the pay scale of Tradesman 'D' was revised to Rs.4500-7000/- w.e.f. 1.1.1996 vide O.M. dated 17.5.1999. However, immediately thereafter the respondent no.2 vide impugned order dated 25.10.1999 re-appointed all the applicants as Tradesman 'C' in the pay scale of Rs.4000-6000/- with retrospective effect i.e. from the date of their original appointment of Tradesman 'D'.

3. The applicants are aggrieved that without any fault of theirs they have been reduced to the post of Tradesman 'C' when originally they were appointed as Tradesman 'D'. According to them the reduction in rank would deprive them of their future promotion to the higher grade of Tradesman 'E' which they would have otherwise got had they continued in the post of Tradesman 'D'. They have therefore prayed to quash and set aside the impugned orders dated 25.10.1999 and 13.3.2000 and to hold and declare that those who were appointed as Tradesman 'D' cannot be reverted and placed as Tradesman 'C'. They have also sought a declaration to hold them as entitled to all consequential benefits from the date of their initial appointment.

.....3/-

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4. The respondents do not dispute that the applicants were originally appointed as Tradesman 'D' after the completion of the probation period by the applicants. However according to the respondents this was as per the position prevailing then. Earlier as per the recommendations of the Pay Commission, the post of Tradesman 'C' and Tradesman 'D' were merged and the post of Tradesman 'C' was redesignated as Tradesman 'D' in the scale of Rs.4000-6000/- (page 97 of the Paper Book). However, the respondents found some practical difficulties in implementing the aforesaid merged pay scales and, therefore, they decided to de-merge the post of Tradesman 'D' and Tradesman 'C' and to go back to the original position. As per the then prevailing norms for induction as Tradesman there were three pay scales viz. Tradesman 'D' in the scale of Rs.1150-1500/-, Tradesman 'C' in the scale of Rs.1200-1800/- and Tradesman 'D' in the scale of Rs.1320-2040/-. A person who secured above 85% marks in his training course was to be absorbed in the grade of Tradesman 'D' with no increments or one increment as the case may be, a person who secured between 70% to 84% marks in his training was to be absorbed as Tradesman 'C' with no increment or one increment or two or three increments and a person securing less than 70% marks in his training was to be absorbed as Tradesman 'B' with one increment only. Therefore on the de-merging of Tradesman 'C' and 'D', the applicants were re-appointed as Tradesman 'C' depending upon their marks position.

5. The learned counsel for the respondents also contends that the applicants have not lost monetarily in the sense the pay scale is the same i.e. Rs.4000-6000/- in which they were

initially appointed. On the other hand the applicants have gained as they have all received two or three increments as shown in Exhibit AF-4 on Page 131 of the Paper Book. Thus according to the respondents no damage has been done and the applicants have been rightly placed in the grade of Tradesman 'C'. The respondents admit that the applicants will not be eligible to be considered for promotion to Grade 'E' directly. They will once again have to go through Tradesman 'D' before aspiring for promotion to Grade 'E'.

6. The learned counsel for the applicant further contends that it is against the principles of natural justice as in the redesignation process they have been downgraded. They were earlier appointed to a higher grade and bringing them down and that to with retrospective effect is violative of the principles of natural justice. Though the scale may be the same, they had actually been fixed in the revised grade of Rs.4500-7000/even though for a short period, by the respondents vide order dated 13.10.1998. It was no doubt cancelled later on.

7. The learned counsel for the applicant has relied on the decision of a Constitution of the Hon'ble Supreme Court in Chairman, Railway Board & others Vs. C.R. Rangadhamajiah & others, (1997 SCC (L&S) 1527. In Para 20 judgment it has been stated that a "rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the ground of retroactivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an

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anterior date a benefit which has been granted or availed of e.g. promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively." We are in respectful agreement that the benefit which was granted cannot be withdrawn with retrospective effect.

8. The learned counsel for the applicant also argued that initially the order regarding the pay scales of Tradesman was issued with the Presidential Sanction and the redesignation of the posts of Tradesman has now been done by an executive order. Therefore it does not hold good. The learned counsel for the respondents however refuted the same by pointing out that the Department of Atomic Energy having been set up under the statute is independent and could have its own rules and the Trombay Council has been given the necessary powers and, therefore, the respondents action is justified.

9. We are however not convinced. We have given careful consideration to the arguments advanced on both sides by the stand of the respondents. In our considered view the applicants cannot be deprived of the benefit given to them, retrospectively. Further, certainly prejudice is caused to them, in that they, won't be entitled to future promotion directly to the higher post of Tradesman "E". In our view the applicants cannot now be denied initial appointment given to them as Tradesman "D". Their placement cannot be changed to their disadvantage. It is unfair and not proper. We therefore hold that the applicants are entitled to be retained in Tradesman Grade "D" with all consequential benefits. Accordingly we quash ^{and set aside} the impugned orders dated 25.10.1999 and 13.3.2000.

10. The O.A. is allowed. No costs.

Shanta S
(Smt. Shanta Shastri)
Member (A)

Ashok Agarwal
(Ashok Agarwal)
Chairman

dt: 18.7.2002
~~Order~~/Judgement despatched
to Applicant/Respondent(s)
4.7.2002
AB/413

(41)

Per Tribunal Date 30/10/02
Applicant present by Both
Advocate / present by present
Council. Home over
The matter adjourned to 20/11/02
for

WP
Dy. Registrar

Write (R)
31/10

20.11.02

Shri R.R. Shetty for
Applicant Respondents
Shri S.S. Walia applicant
M.P 671/02 for extension
of time considered. Grounds
also considered. MP cannot
be allowed. Hence MP 671/02
rejected.

CP No. 99/2002
for orders on
22/11/2002
Qw
18/11

Write Order
21/11

31.11.02
(S.L. Jain)
M(J)

22
(B.N. Bahadur)
M(A)

Dated 22.11.2002 (44)

Applicant by Shri R.P. Sarsena
Issue notice to the Contemner.
They may appear either in person or through
advocate. They are directed to file
reply by the next date.
List the case for orders on

10/1-2003.

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(Smt Shanta Shastri)
M(A)

31.11.02
(S.L. Jain)
M(J)

Recd. reply to
CP/99/02 from
Respondents
on 8/1/03.

Write (Mue)
29/11

Dated: 10.1.2003 (13)

Shri R.P. Saxena counsel for
the applicant. Shri R.R. Shetty for
Shri R.K. Shetty counsel for the
respondents.

List the case on 24.1.2003

SB
(S.L. Jain)
M(T)

BS
(B.N. Bahadur)
M(A)

24.1.2003 (8)

None for the applicant.
Respondents by Shri R.R. Shetty.

List the case on 31.1.2003.

24.1.2003

BS

my

BS
(B.N. Bahadur)
M(A)

BS
(D.C. Verma)
VC

Dated: 31.3.2003 (14)

Shri R.P. Saxena counsel for the applicant.
Shri R.R. Shetty counsel for the respondents.

The learned Counsel for the parties
informed that - ~~Tribunal~~ C.P. 29/2002 against
the order of the Tribunal dated 18.2.2002
has been filed. The order of the Tribunal has
been stayed by the Hon'ble High Court on
27.1.2003. No action is required to be
taken in this C.P. The applicant is at liberty
to come to the Tribunal after the writ petition
is decided. Notice on C.P. is discharged.

BS
(B.N. Bahadur)
M(A)

BS
(D.C. Verma)
VC

BS
(B.N. Bahadur)
M(A)