

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 344 of 2000.

Dated this Thursday the 5th day of September, 2002.

Shri J. S. Royal Benjamin. .... Applicant.

Shri S. P. Saxena. .... Advocate for the  
Applicant.

**VERSUS**

Union of India & Others. .... Respondents.

Shri R. R. Shetty. .... Advocate for  
Respondents.

CORAM : Hon'ble Shri Justice Birendra Dikshit, Vice-Chairman.  
Hon'ble Shri B. N. Bahadur, 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 ?

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(B: N. BAHADUR)  
MEMBER (A).

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CORAM : Hon'ble Shri Justice Birendra Dikshit, Vice-Chairman.

Hon'ble Shri B. N. Bahadur, Member (A).

J. S. Royal Benjamin,  
Asstt. Foreman/L.A. Sec.,  
Ordnance Factory,  
Varangaon, Dist. Jalgaon. ....

Applicant.

(By Advocate Shri S. P. Saxena)

VERSUS

1. Union of India through  
The Secretary,  
Ministry of Defence,  
New Delhi - 110 011.

2. Director General/Chairman,  
Ordnance Factory Board,  
10-A, Auckland Road,  
Calcutta - 700 001.

3. The General Manager,  
Ordnance Factory,  
Varangaon,  
Dist. Jalgaon,.

4. The General Manager,  
Ordnance Factory,  
Tiruchirapalli.

5. The Chief Controller of  
Accounts (Factories),  
Shahid Khudiram Bose Road,  
Calcutta - 700 001. ....

Respondents.

(By Advocate - Shri R. R. Shetty).

O R D E R

PER : Shri B. N. Bahadur, Member (A).

The Applicant in this case comes up to the Tribunal seeking the relief, in substance, as follows :

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"8(b) to hold and declare that the recovery of overpayment due to fixation of pay ordered by Respondents cannot be made from the Applicant, and to quash and set aside the impugned order,

(c) to direct the Respondents to refix the pay of the applicant since 01.01.1986 onwards in Chargeman Gr.II, Chargeman Gr.I and Asstt. Foreman grades according to relevant F.R., and to step up his pay correctly at par with his junior Shri T.K. Pazhanimalai according to Rules on the subject after taking into account the options already given by applicant."

2. The facts of the case, as brought out by Applicant are that he joined the Ordnance Factories as Trade Apprentice on 15.06.1964, was graded Mechanist 'A' from 01.07.1966, promoted Supervisor 'B' on 01.07.1971 and Supervisor 'A' on 02.01.1975. Supervisor 'A' was redesignated as Chargeman-II from 01.01.1981 the pay scale being the same. Further promotion was secured by Applicant as Chargeman Grade-I on 23.06.1986 in the grade of Rs. 1600-2660. Finally, Applicant was promoted to present post of Assistant Foreman w.e.f. 15.12.1997 in the scale of pay of Rs. 6500-10,500.

3. The Applicant is aggrieved, in that, another employee by name T. K. Pazhanimalai, who was junior to the Applicant as per seniority list, has been fixed at a higher pay. The Applicant submits thereafter he gave option for fixing of his pay in revised pay scale w.e.f. 01.07.1986 but Respondents did not act as per his option, and fixed his pay w.e.f. 01.01.1986. Further progress is described and it is stated that T.K. Pazhanimalai opted for his pay fixation from 01.12.1987 in the grade of Chargeman-II. Further details of the pay progression of Applicant, and the aforesaid junior are then described and the

stand taken that when Applicant was senior in the grade of Chargeman-II to Shri Pazhanimalai, and when his promotion came some three years earlier to Chargeman Grade-I his grievances needs to be redressed because from 01.12.1989 Shri Pazhanimalai's pay was fixed at Rs. 2100/- whereas Applicant stayed put at Rs. 2000/-. Hence the need for stepping up it is argued.

4. The Respondents have first provided a historical background of the case in their Written Statement, and stated that the Applicant had indeed opted to get his pay fixed in the revised scale with effect from 01.01.1986 and hence his pay was fixed in the pay scale of Rs. 1400-2300. Subsequently, in view of revised orders of Government of India dated 22.12.1986 extending the benefit of 20% boost to those opting from subsequent date also, Applicant revised his option for pay fixation from 01.07.1986. Accordingly, his pay was fixed at Rs. 1720/-. Respondents further state that the point at this issue arose when Applicant was promoted to Chargeman Grade-I retrospectively on 23.08.1986 vide order dated 21.5.1987. He was permitted to exercise option under F.R. 22 C but Applicant contended that his pay should first be fixed in revised scale from 01.07.1986. Further rules of S.R.O. are cited. In this connection, para 4 of the reply statement is relevant. Respondents then describe the action of Applicant and others in filing an O.A. before Madras Bench of this Tribunal seeking relief for fixation of pay, and state that this O.A. was dismissed on 21.09.1989. Review Application was also dismissed. A stand is taken that the Applicant's case is hit by the principles of resjudicata. In the further part of Respondents' reply para-wise replies are sought to be provided to the averments made in the case.

5. We have seen the papers in the case and have heard the Learned Counsel on both sides, namely - Learned Counsel, Shri S. P. Saxena for the Applicant and Learned Counsel Shri R. R. Shetty for the Respondents.

6. Since the point regarding the O.A. being hit by the principles of resjudicata/constructive resjudicata has been raised, we are taking up this issue for decision first. We have heard both Learned Counsel on this issue. Shri S. P. Saxena argued that the Madras judgement has nothing to do with the present prayers, and that, this is a matter where the action of 1989 has been questioned. Learned Counsel, Shri Shetty, on the other hand stated that the same rule was questioned before the Madras Bench and that this would be clear from the reply of the Respondents, as detailed in para 4 of the Written Statement and specially the explanation mentioned therein. He also drew our attention to the copy of the judgement annexed of the Madras Bench of the Tribunal specially internal page 5 of the judgement.

7. It is seen that the Madras Bench judgement (O.A. 743/88) was disposed of 01.09.1989 and the first Applicant in the O.A. was the present Applicant before us. The numbering of the O.A. shows that it was filed in 1988. The Applicant had got promoted to the post of Chargeman Grade-I on 23.06.1986 (retrospectively) as stated by him and indeed, by Respondents in para 4 of Written Statement. Also, that this retrospective promotion was provided vide order dated 21.05.1987. Thus, it is clear that when the O.A. was filed before the Madras Bench, somewhere in 1988, this order had been issued already in May, 1987.



8. It is stated in the judgement of Madras Bench, in the first paragraph, as follows :

"The five applicants in the present application have approached the Tribunal seeking (i) to set aside the order of the first respondent dt. 1.3.1988, (ii) to issue appropriate to the respondents to implement the O.M. No. 1/2/86 Estt. (Pay-1) dt. 10.4.1987, issued by the Ministry of Finance, and published in the F.O.P. & I No. 24 dt. 29.1.1988 Para 3 and apply FR 22-C in the matter of fixation of pay of the applicants in the promoted post of Chargeman Gr.I(Mechanical), and to fix the pay at Rs. 1800/- with effect from 1.7.1986 for applicants 1 to 3 herein, at Rs. 1800/- with effect from 1.10.1986 for the fourth applicant and at Rs. 2,000/- with effect from 1.10.1986 for the fifth applicant; and (iii) to direct the respondents to pay all arrears of pay and allowances consequent upon such refixation."

The entire issue has thereafter been examined.

9. It is true that in that judgement there is no mention about the name of Shri P. K. Pazhanimalai or anyone else or the aspect relating to stepping up vis-a-vis a junior. Thus, if the point is that the present Applicant gets a fresh cause of action in 1989, only because of his junior overtaking him wrongly then the matter would be hit by delay and laches because in para 4.7 of the O.A. it is stated as follows :

"It is relevant to mention that the applicant was drawing basic pay of Rs. 2000/- since 01.06.1989 and therefore upto 30.11.1989 the applicant and Shri .K. Pazhanimala were having equal basic pay of Rs. 2000/- per month. However, his above said junior started receiving basic pay of Rs. 2100/- from 01.12.1989 but the applicant who was senior was thus receiving a lower basic pay of Rs. 2000/- even after 01.12.1989."



Thus, even if as argued, the Applicant had drawn a cause of action in December, 1989, the filing of the O.A. has come in the year 2000 and no argument about representations made/disposed of, etc. can save the Applicant for such a long delay.

10. Apart from this aspect, in relation to the other earlier grievances there is force in argument of the Learned Counsel, Shri Shetty, that the application suffers as being adversely hit on the principles of res judicata/constructive res judicata.

11. In view of the above position, we do not think this is a fit case for providing the relief sought. The O.A. is dismissed with no orders as to costs.

baha due

(B. N. BAHADUR)  
MEMBER (A).

B. Dikshit

(BIRENDRA DIKSHIT)  
VICE-CHAIRMAN.

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