

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 22/2000

Date of Decision : 1.8.2001

P.R.Kulkarni & Anr.  Applicant

Shri S.P.Saxena  Advocate for the  
Applicant.

VERSUS

Union of India & Ors.  Respondents

Shri R.K.Shetty  Advocate for the  
Respondents

CORAM:

The Hon'ble Shri S.J.Jain, Member (J)

The Hon'ble Smt. Shanta Shastry, 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

*Shant J*  
(SMT.SHANTA SHAstry)  
MEMBER (A)

mrj:

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.22/2000

Wednesday this the 1st day of August, 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt.Shanta Shastry, Member (A)

1. P.R.Kulkarni,  
R/at Flat No. 12,  
"Sunview - B",  
Sukhwani Park,  
Near Vastu Udyog,  
Pimpri, Pune.
2. Datar Gopal Vasudev,  
R/at 306, House No.  
Plot No. 39, Deolali Camp,  
Deolali. ....Applicants

By Advocate Shri S.P.Saxena:

vs.

1. Union of India  
through the Secretary,  
Ministry of defence,  
DHQ. P.O., New Delhi.
2. The Engineer-in-Chief,  
Army Headquarters,  
Kashmir House,  
DHQ. P.O. New Delhi.
3. The Chief Engineer,  
Southern Command,  
Pune. ....Respondents
4. The Chief Engineer,  
Garrison Engineer,  
Deolali.

By Advocate Shri R.K.Shetty

O R D E R (ORAL)

(Per : Smt. Shanta Shastry, Member (A))

The prayer of the applicants in this OA. is to direct the respondents to extend the benefits of revision of pay of U.D.C. grade from 1.1.1947 and to grant them annual increments from time to time, to calculate the difference of arrears of pay arising out of refixation from 1.1.1947 and to pay the same, and similarly to re-calculate all the pensionary benefits and pay the arrears of retirement benefits, to grant all other consequential benefits with interest at the rate of 18% p.a.

2. The Applicant No. 1 was initially recruited as L.D.C. on 31.1.1942 and was subsequently promoted to the post of U.D.C. and Office Superintendent and retired on 30.11.1981. Applicant No. 2 was also appointed as L.D.C. on 13.4.1945 and was promoted to the post of UDC and superannuated on 30.11.1980.

3. In the Organisation where the applicants worked, there were initially two grades of Clerks, namely, Clerk Lower Division and Clerk Upper Division. However, in September, 1944 these grades were changed to Clerk 'A', 'B' and 'C' in pursuance of the memorandum dated 19.8.1944 from the Ministry of Finance. Thereafter, when the Report of the First Pay Commission headed by

Shri Vardacharya was published and the recommendations were accepted and notified by the respondents, new pay scales/grades were introduced in the year 1947. The earlier Clerical Grades of 'A', 'B' and 'C' were totally abolished and they were replaced with again two grades only, namely, Clerk Upper Division (Rs.80-220) and Clerk Lower Division (Rs.55-130) w.e.f. 1.1.1947. The posts of Clerks 'A' and 'B' were equated with Clerk Upper Division and Clerk 'C' was equated with Lower Division Clerk. The Ministry of Defence accordingly classified the posts w.e.f. 1.1.1947. The applicants who were in the erstwhile 'B' grade thus became eligible to be placed as UDCs w.e.f. 1.1.1947 in the scale of Rs.80-220. However, according to the applicants they were wrongly equated and classified as L.D.C. in the scale of Rs.55-130. Aggrieved by this, the applicants have approached this Tribunal. According to them, they were wrongly classified and equated as Clerk Lower Division, they should have been equated as Upper Division Clerk in terms of the recommendations of the First Pay Commission as accepted by the respondents. They have been down graded unnecessarily. This is in breach of the decision taken by the respondents. The applicants represented against such down gradation, but with no fruitful results. They were also later on promoted as U.D.C. from 8.1.1962.

4. Several applicants who were similarly placed from other Ministries of the Government of India had approached the High Court of Bombay and the High Court of Madras as well as Supreme

Court and decisions were given in favour of the applicants therein, holding them as entitled to the classification as UDC and the corresponding pay scales. The applicants who approached the Madras High Court were from the same Organisation as the present applicants are, i.e. the Military Engineering Service. The learned counsel for the applicant submits that these judgements were in REM and should have been automatically made applicable to the applicants also. Further, when the judgement of the Madras High Court was challenged before the Supreme Court, the Supreme Court by its order dated 4.11.1987 dismissed the S.L.P. However, the Supreme Court reduced the liability of the Union of India for monetary payments by 40% of the total benefits. Thus, making them entitled to 60% of their arrears. Since the applicants are similarly placed, it is the contention of the applicants that the benefit of these judgements should <sup>be</sup> extended to them also. The learned counsel has further cited orders of this Tribunal in OA.NO.1037/92 and has submitted that similar judgements have been given by other Benches of this Tribunal.

5. The Learned counsel for the respondents opposes this claim and submits that unless the applicants are able to show that they were really Grade 'B' Clerks as on 1.1.1947, they cannot be extended the benefit of these judgements. In this connection during the last hearing on 19.1.2001, the learned

counsel for the respondents have placed before this Tribunal a photo-copy of the service record and he was to place on file the relevant rules if any which existed at the relevant time. The question also was narrowed down to whether the designation 'Clerk L.H.' is to be equated with that of UDC or Clerk Grade 'C'. It was also submitted by the learned counsel for the applicants that he did not want to press the relief for Applicant No. 1. It was so recorded.

6. As such the issue is now narrowed down to see whether these applicants were really 'B' grade Clerks as on 1.1.1947. It is seen from service record of Applicant No. 1 as produced by the respondents at Exhibit-'R-5' to the written reply. It is seen that the Applicant No. 1 was appointed on 30.1.1942 as Lower Division Clerk and was later on promoted as U.D.C. on 7.6.1945. He was a Grade 'B' Clerk on 1.9.1944 and Grade 'A' Clerk on 7.6.1945 as per re-classification. The applicant was reverted to Clerk Lower Division w.e.f. 1.9.1948. This shows that as on 1.1.1947 the Applicant No. 1 was a Grade 'A' Clerk. This, in our considered view, settles the claim of Applicant No. 1 and he has to be held entitled to the designation of U.D.C. and the corresponding pay scale as on 1.1.1947.

7. In regard to Applicant No. 2, we note that he was appointed on 13.4.1945 as 'B' grade Clerk. It is seen from his service record placed at Exhibit-'R-6' to the written reply

that he was transferred to different places and as on 12.1.1947 he is shown as Clerk L.H. and further as Clerk 'C' w.e.f. 1.7.1947. It is nowhere shown in this record that the applicant at any time had been reverted to Clerk 'C' grade prior to 1.1.1947. Even if there is any doubt about the designation of Clerk L.H., this applicant was shown as Clerk L.H. only from 12.1.1947 and not prior to that. We are therefore to infer that he continued to be as 'B' grade Clerk at least till 11.1.1947.

8. The learned counsel for the respondents has raised the plea that we have to see not only as to whether the employee was in a particular grade but it has also to be seen whether the employee was in the pay scale of Rs.80-120 at the relevant time as has been observed by the Madras High Court. In view of the limited service record that has been made available and since there is nothing contrary mentioned as to the Applicant No. 2 not being in the scale of Rs.80-120, we are inclined to hold that the Applicant No. 2 also was 'B' grade Clerk as on 1.1.1947 and therefore becomes entitled for the classification as U.D.C. with corresponding pay scale.

9. In the facts and circumstances of the case, the Applicants No. 1 & 2 shall be entitled to the Upper Division Clerk grade with the attendant pay scale from 1.1.1947. However, the arrears of pay shall be confined to only 50% of the salary admissible. They shall be entitled to all the consequential

benefits. We note further that the Applicant No. 1 was reverted as L.D.C. w.e.f. 1.9.1948 and the Applicant No. 2 w.e.f. 12.1.1947. Their pay shall be fixed accordingly and the benefits calculated correspondingly. The applicants shall also be entitled to the revised pensionary benefits based on this decision. ~~As~~ As the applicant no.1 has not pressed for any relief, he shall not be entitled to any relief accordingly.

10. This shall be complied with within a period of four months from the date of receipt of a copy of this order.

11. In the result, OA. succeeds. No costs.

*Shanta*

(SMT.SHANTA SHASTRY)

MEMBER (A)

*JLJ*

(S.L.JAIN)

MEMBER (J)

mrj.

~~As~~ Inserted as per Tribunal's order dated 17/4/03.  
passed in MP 246/03.

*per to  
MP 22/4/03*

D.R. *Sh*  
(एस. ए. देवपांडे)

उप दिवंगक,  
केंद्रीय प्रशासनिक अधिकारी,  
वैद्य व्यापारी, मुमुक्षु  
'हुलेस्टान' विजयनग. शिरकोट रोड,  
फोट, तुम्ही-400 001.

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

C.P. NO. 61/2003 in O.A. No. 22/2000

Dated this Thursday, the 24th day of July, 2003.

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

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

Shri G. V. Datar ... Petitioner.

(By Advocate Shri K. K. Waghmare)

VERSUS

Shri Piararam,  
Secretary - Defence & Others ... Contemnors.

(By Advocate Shri R. K. Shetty).

TRIBUNAL'S ORDER :

Heard Shri K. K. Waghmare, Learned Counsel for applicant and Shri R. K. Shetty, Learned Counsel for Respondents.

2. The Contempt Petition is moved by the applicant complaining that the orders passed in O.A. No. 22/2000 are not complied with by the opponents and as such the opponents have committed contempt of this Tribunal. While disposing of the O.A. by judgement and order dated 01.08.2001, the Tribunal directed that "the Applicants No. 1 and 2 would be entitled to the Upper Division Clerk grade with the attendant pay scale from 1.1.1947. However, the arrears of pay shall be confined to only 50% of the salary admissible." Further directions were also given pertaining to the revised pensionary benefits, etc.

3. However, it appears that subsequent to this direction a review petition was moved for the review of the orders passed and the same had come to be rejected by the Tribunal after hearing both the parties on 24.10.2002. The respondents had also moved M.P. No. 246/2003 for correction in the judgement pointing out

that so far Applicant No. 1 is concerned, it was already conceded by the Learned Counsel for applicant that he was not entitled for the benefit prayed for in the O.A. Since the same was not brought to the notice of the Tribunal at the time of final judgement, the M.P. was allowed with the consent of both parties.. The judgement was directed to be amended stating that Applicant No. 1 had not pressed the relief and, therefore, he was not entitled to any relief. This order had come to be passed on 17.04.2003.

4. From the above narrated facts it is quite apparent that till 17.04.2003 the judgement and order of the Tribunal were under review or reconsideration on one ground or another, hence for implementation of the orders the time began to run from the order passed in the M.P. i.e. 17.04.2003. We, therefore, find lot of substance in the submission of Mr. R. K. Shetty, Learned Counsel for Opponent that this C.P. is premature and opponents are entitled to the time upto September, 2003 for implementing the orders and it cannot be said at this juncture that the opponents have wilfully or deliberately flouted the orders of the Tribunal.

5. We hold that the Contempt Petition is premature and on this ground the C.P. is rejected. However, it will be open to the applicant to move a fresh C.P. as and when the cause for the same arises.

(SHANKAR PRASAD)

(A. S. SANGHVI)

88\*

order/~~judgement~~ despatched  
to Applicant/~~Respondent~~ (s)  
on 04/8/03

K. Saab

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Review Petition No.65/2001  
in OA No.22/2000.

Dated 30/10/2001

CORAM:HON'BLE SHRI S.L.JAIN, MEMBER(J)  
HON'BLE SMT.SHANTA SHAstry, MEMBER(A)

Shri P.R.Kulkarni

... Applicant

V/s.

Union of India & Ors

... Respondents  
(Review Petitioner)

ORDER ON RP ON CIRCULATION

This review petition has been filed by the respondents in the OA 22/2000 against judgement and order dated 1/8/2001.

The OA was allowed holding that the applicants therein were entitled to the grade of UDC with the attendant pay scale from 1/1/47. However, the arrears of pay would be confined to only 50% of the salary admissible and with all consequential benefits including revised pensionary benefits. In this RP, the respondents have prayed to amend the directions given in the aforesaid judgement by directing that the arrars shall be payable to the applicants only from a period of one year prior to the date of filing of the OA.

This Tribunal has given different relief in identical matters at different times. In some OAs, the arrears were restricted to the the period of three years prior to the filing of the OA and same as in OA-22/2000, 50% arrears were allowed right from 1/1/47. Respondents in the OAs have filed RPs separately in some of the OAs already decided by this Tribunal. It would therefore be desirable to list this RP for hearing. Registry is directed to list the RP for hearing alongwith other RPs on similar issue.

*Shanta*  
(SMT.SHANTA SHAstry)  
MEMBER(A)

*S.L.Jain*  
(S.L.JAIN)  
MEMBER(J)

abp