

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.947/93.

Proforma this the 26th day of July 2000.

Shri A.V.Haridasan, Vice-Chairman,
Shri Govindan S.Tampi, Member (A).

Vasant Ramchandra Kulkarni,
S.No.17/2A,
Vadgaon Dhayari,
Pune - 400 041.
(By Advocate Smt.Jahanara Sarkot)

...Applicant.

Vs.

1. The President of India,
through the Secretary,
Govt. of India, Ministry of
Water Resources, S.S.Bhavan,
New Delhi - 110 001.

2. The Director,
Central Water & Power Research
Station, Khadakwasla,
Pune - 411 024.
(By Advocate Shri V.D.Vadhavkar)

...Respondents.

: ORDER :

Govindan S.Tampi, Member (A).

Application No.947/93 has been filed by Shri Vasant Ramchandra Kulkarni a Foreman in the Central Water and Power Station, Khadakwasla (C.W.P.R.S., Khadakwasla for short) claiming the following reliefs.

"8:1 That the applicant's claim/application be admitted and allowed.

8:2 That applicant be granted 3 advance increments from the date of his appointment i.e. since March, 1965.

8:3 Grant fixation of payment and regularising the service of applicant since 1965, with 5 year benefits

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from 1965 to 1970, with successive benefits.

8:4 To regularise and confirm the applicant to the post of Foreman w.e.f. 1965 onwards upto date.

8:5 The respondents be directed to immediately consider the case of the applicant for all successive promotions from 1968 onwards, and grant promotion & confirm to the applicant to the post of 'Chargeman'... to Workshop Superintendent... to Assistant Research Officer.... to Research Officer, with retrospective effect and retrospective financial and other benefits.

8:6 To direct respondents to immediately appoint the applicant to post of Research Officer w.e.f. 1988 with all consequential benefits. That the applicant be declared fit, eligible senior and qualified for promotion to the successive grades of chargeman - workshop Superintendent - Assistant Research Officer and Research Officer with immediate effect.

8:7 To order respondents to pay compensation of Rs.2,00,000/- with interest thereon, being financial loss suffered by applicant for denial of successive promotions by the respondents, with full retrospective effect.

8:8 Costs of this application be awarded to applicant from respondents.

8:9 Any other just and equitable orders and reliefs to meet ends of justice be passed."

2. Applicant was appointed as Foreman by the Respondent No.2 in the pay scale Rs.150-10-250 EB-10-290-15-335-EB-15-380, by orders dt. 27.2.1965/3.4.1965 in which he has been continuing. He had, after passing S.S.C. Technical examination, 3 years Mechanical Engineering Certificate experience as Supervisor in Southern Machines Industries, Pune before he joined Government Service. At the time of his appointment he was orally promised three additional increments fixing his basic pay as Rs.180/- as was the practice in the organisation, but his pay was wrongly fixed at Rs.175/-. His case for additional increment had also been recommended by the Chief Research Officer, Group-I Structural Unit of the C.W.P.R.S. He had also represented for the same repeatedly. He was informed on 16.6.1966 that advance

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increments can be given only at the time of initial appointment and not after a person has put in some service. Further, by order of 23.8.1966 he was informed that his basic pay stood at Rs.150/-, but he had drawn the higher pay of Rs.175/- p.m. leading to possible disciplinary action. On his representation, the Head of his unit recommended the regularisation of his higher pay but on the contrary recovery to the tune of Rs.25/- p.m. from his salary was made. His representation was not forwarded to Chairman, C.W.P.R.S. Harassment was caused to him by way of illegal transfers. This was followed by injustice by way of denial of promotion for 27 years, termination order, spoiling of the ACRs and denial of confirmation etc. He had to face a number of difficulties in the job on false grounds which were raised only to harrass him. He had to move the Chairman of C.W.P.R.S. to have the grievance redressed. Thereafter, a charge sheet was issued to him which culminated in order dt. 27.2.1982 reducing his pay by three stages from Rs.580/- to Rs.530/-. Further, even after 25 years of service and inspite of possessing requisite qualification, merit and experience he had been denied promotion while in fact after five years of service he should have been promoted as Chargeman. A circular was issued on 23.10.1973, by the Department for filling up the post of chargeman/mechanical superintendent. Applicant filed his application for the post which was not accepted. In fact, persons who did not even possess basic requisite qualification and work experience were taken in preference to him. Applicant specifically referred to the cases of S/Shri J.R.Sheth, M.P.Khandare and S.C.Agarwal who was his junior. His applications for elevation had been denied, when other persons with lesser qualification and experience had

been preferred. He had, therefore, come before the Tribunal seeking redressal.

3. In the reply, respondents point out that the Appointing Board had not recommended any advance increments to the applicant and he has been suitably informed also about it. With regard to his request for regularisation and confirmation in the grade as Foreman from the date of his appointment, the respondents say that he did not possess the requisite educational qualification, as well as, experience prescribed by the necessary rules. Subsequently, Government vide their orders dt. 16.12.1974 and 12.12.1975 decided to regularise his case from the date on which he required minimum 7 years' experience, counting in the process, the experience he had gained before his was original appointment as Foreman. He was accordingly regularised in the grade of Foreman w.e.f. 25.9.1970. Therefore, his contention that he was not given proper/timely promotion was not correct. He had been transferred on quite a few occasions on account of bad reports against him in certain places and for providing him a chance to improve. In fact as he had not mended his manners his services were terminated on 2.5.1973, but the same order was withdrawn, on an assurance from him that he would improve his behaviour, which also did not take place. On a subsequent charge sheet after the necessary enquiry, he was penalised on 27.2.1982, by reduction in his salary by three stages to Rs.530/-.

Following the adoption of M.S.Swaminathan Committee, the pay scales of Foreman were revised and the post was merged with other technical posts. Foreman and few other posts became Technicians with promotional avenue to Senior technicians (formerly chargeman) and Superintendents (formerly Workshop Superintendents). During the

year 1975 and 1977, posts of Chargeman were filled by direct recruits as eligible candidates were not available in the Department. Further, he was confirmed as Technician w.e.f. 1.4.1988 in terms of Government Orders, but he had not been confirmed by the earlier DPC, as he was not been considered fit by the DPC. The respondents avowed that the applicant had accepted the job of Foreman unconditionally and that there was neither any promise or any practise for grant of additional advance increments in the Department. His basic pay was to be correctly fixed at the minimum of the scale attached to that post, but as he had wrongly drawn basic pay of Rs.175/-, action was taken to recover the sum. There has not been any discrimination against him and that he was not actually made a Chargeman as there were no vacancies. J.R.Sheth, M.P.Khandare, referred to by the applicant had been recruited as far back as 2.8.1948 and 23.6.1949, while Agarwal was directly recruited as Chargeman as he possessed diploma in Mechanical Engineering on 18.3.1970, he was never junior to the applicant. Respondents plead that there has been no discriminatory treatment to the applicant and that he had been dealt properly by the respondents and that he cannot justifiably have any further claim.

4. We have heard counsel for both the applicant and the respondents. Smt.Jahanara Sarkot appearing on behalf of the applicant reiterated the pleas and indicated that though he was promised orally by the Administrative Officer that he would be given three additional increments amounting to Rs. 30/- on the basic pay, he was given the basic pay of Electrician at Rs.175/- and thereafter recovery @ Rs. 25/- p.m. started. She states that the respondents had acted in a discriminating manner and that when

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the promotions for the post of Chargeman/Mechanical Superintendent came up, his claim was not considered and that the said Khandwe and Agarwal were promoted. According to the counsel, she had been discriminated by way of false/repeated charge sheets, leading to the reduction in his pay and denial of different posts which had come in the way of his rightful promotion. It was pleaded that at least w.e.f. 1970 when his services were regularised he should have been actually considered for promotion especially as one Khandare had been promoted in the meanwhile, though he did not possess any basic qualification. Replying for the respondents, Shri V.D.Vadhavkar pointed out that the department had acted in pursuance of the instructions and the rules in force duly communicated from time to time and therefore, there is no reason as to why the applicant concerned should have any grievance. He also pointed out that by Order No.680/85/ACP/2000/Admn. dt. 13.4.2000 the benefit of Assured Career Progression Scheme (ACP) w.e.f. 4.3.1989 in the higher scale of Foreman had been extended to the person and that there shall not be any further grievances.

5. We have considered the matter. The first point for determination relates down to the non-payment of three advance additional increments at the time of Recruitment, As the individual had been specifically selected as Foreman in the pay scale of Rs.150-380 and there has been no order by the Appointing Board that the person should be given additional increments, the applicant's plea that there was some practise or an oral information that he would be given the additional increments cannot be upheld. In fact, the department had acted

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correctly in recovering the excess payment given to the person by wrong fixation of pay at Rs. 175/-, whereas, the basic pay at the relevant time should have been Rs.150/-. With regard to the claim for promotion at least from the date of regularisation of services from 1970, we feel that the party would have had a case especially as R.P.Khandare who possessed much less an educational qualification was promoted in 1972. This, however, is besides the point, as the applicant's ACR's show that from 1970 onwards upto 1984, the person was repeatedly receiving adverse remarks duly entered in the ACR and had also been penalised on 27/2/82 by reduction by three stages for non-performance.

6. In fact only from 1986 he has gone up in his performance appraisal. He could have been considered for promotion to the grade of chargeman (redesignated as Technicians) and thereafter to higher posts depending on his eligibility and suitability for the relevant posts. The fact that stepping up of pay in terms of Assured Career Programme Scheme was extended to him w.e.f. 4/3/1989 does not answer the requirement, as the applicant had become eligible to be considered for promotion at least by 1986.

7. In view of the above, we hold that the applicants claim for three additional increments since March 1965 has no merits and is to be rejected. His claim for confirmation from 1965 is not tenable and is rejected. Similarly, his claim for promotion to the grade of Chargeman (now Sr.technician) ^{from 1968} _^ has no merits. His case would, deserve consideration for promotion from 1986 onwards with consequential benefits, at relevant intervals. We

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therefore direct the respondents to consider his case for promotion to the grade of Chargeman from 1986, with resultant benefits in career, if any. The matter is accordingly disposed. No orders as to costs.

(GOVINDAN S.TAMPI)
MEMBER(A)

B.

(A.V.HARIDASAN)
VICE - CHAIRMAN