

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. : 394/93

Date of Decision : 3rd January 2007

C.P.Pathan _____ Applicant.

Shri K.S.Kallapura _____ Advocate for the
Applicant.

VERSUS

Union of India & Ors. _____ Respondents.

Shri R.K.Shetty _____ Advocate for the
Respondents.

CORAM :

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

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

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

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

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.394/93

Dated this the 3rd day of January 2000.

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

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

C.P.Pathan,
General Secretary,
All India Military Engineer
Services Kamgar Sanghathan,
12/14, Rajgir Chambers, Room No.60,
7th Floor, Shahid Bhagatsingh Marg,
Opp.Old Custom House, Bombay & Ors.

... Applicants

By Advocate Shri K.S.Kallapura

V/S.

1. Union of India through
The Secretary,
Ministry of Defence,
South Block, New Delhi.
2. Engineer-in-Chief,
Army Headquarters,
Kashmir House, DHQ PO,
New Delhi.
3. Chief Engineer,
Headquarters, Southern Command
Engineers' Branch, Pune.
4. Chief Engineer (Navy) Bombay,
26 Assaye Buildings,
Colaba, Bombay.
5. Commander Works Engineers
Naval Works, Dr.Homi Bhabha Road,
Navy Nagar, Colaba, Bombay.
6. Garrison Engineer (Naval Works)
Dr.Homi Bhabha Road,
Navy Nagar, Colaba, Bombay.
7. Garrison Engineer (W),
Dr.Homi Bhabha Road,
Navy Nagar, Colaba, Bombay.

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8. Garrison Engineer (NW) Kunjali,
Dr.Homi Bhabha Road,
Navy Nagar, Colaba, Bombay.

9. Commander Works Engineers
(Bombay), Assaye Bldg., Bombay.

... Respondents

By Advocate Shri R.K.Shetty

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act,1985 seeking the following reliefs:-

" (a) Directions may be issued to fix up revised pay scales at Rs.950 + increments earned prior to 1.12.87 as under :

- (i) Where the basic pay as arrived at under Clause (a) is a step in the new scales applicable, he shall be fitted at the step in the said new scales from 1.12.87, and
- (ii) Where the basic pay as arrived at under Clause (a) is not a step in the revised new pay scales applicable to him, he shall be stepped upto the next higher step in the said new scale from 1.12.1987.
- (iii) Alternatively, appropriate service increments shall be given in the revised scales of pay in order to reflect his past services prior to 1.12.87.

(b) Arrears of bonus arising out of revised pay scales may be paid in respect of bonus paid for the years 1987-88 to 1991-92, including the arrears due with effect from 1.1.73 after revision the then existing rate of Rs.210-15-290 to Rs.260-400/-.

(c) Cost of this application and professional charges be provided for; and

(d) For such other and further reliefs as this Hon'ble Tribunal may deem fit and proper in the nature and circumstances of the case.

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(e) The applicants may be allowed to file a joint application as the cause of action is same for all the applicants."

2. The applicants who are Ex.Servicemen and working in the establishment of the Garrison Engineer (Naval Works), Dr.Homi Bhabha Road, Navy Nagar, Colaba, Bombay as Lift Operators were provided with revised grade for Lift Operators Rs.950-20-1150-EB-25-1500 which came into effect from 1.12.1987. Prior to the said revised grade, the Lift Operators in MES were placed in the grade of Rs.800-15-950-EB-20-1150, and this grade remained unrevised till 9.11.1992. In OA.Nos.743, 863 and 867/90 the Tribunal, Mumbai Bench has directed the Govt. of India to consider the matter in the light of the observations made in the judgement/order and take a decision in the matter within a period of two months from the date of communication of the said order. Accordingly, the Govt. of India has taken a decision to give the revised pay grade to the Lift Operators working in MES with retrospective effect from 1.12.1987 and the disbursement of arrears in compliance of the same was made on 9.11.1992.

3. The grievance of the applicants is that the authorities concerned arbitrarily fixed the pay at Rs.950/- basic w.e.f. 1.12.1987 ignoring the service increments earned by the Lift Operators. As a result of this fixation, starting salary for a new entrant and for experienced Lift Operator who has put in several years of service with the establishment became the same

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amount, thereby depriving the Lift Operators who had put in several years of their service. Representations were made on 1.12.1992. The applicants claimed that the pay should be fixed in the following manner :-

- (a) Revised pay, i.e. Rs.950/- plus increments earned prior to 1.12.1987 (After fixing the basic pay at Rs.950/- with effect from 1.12.1987, the increments earned prior to 1.12.1987 may be added to the said basic pay of Rs.950/- depending upon the years of service put up by each Lift Operator).
- (b) Where the basic pay as arrived at under Clause (a) is a step in the new scales applicable, he shall be fitted at that step in the said new scales from 1.12.1987, and
- (c) Where the basic pay as arrived at under Clause (a) is not a step in the revised new pay scales applicable to him, he shall be stepped upto the next higher step in the said new scale from 1.12.1987.
- (d) Alternatively, appropriate service increments shall be given in the revised scales of pay in order to reflect his past services prior to 1.12.1987.

No reply has been received from the authorities to their representations. Bonus is also not paid accordingly. Hence, this OA, for the above said relief.

4. The respondents have resisted the claim of the applicants and stated that the revised pay scale is provided to the applicant, is without increase in the duties and responsibilities of the applicant. Hence, the case is covered under F.R.23 which clearly states that the pay of the incumbent is to be fixed in the same stage, if any in the new scale, i.e. if there is no such stage, at the stage next below in the new scale and the difference allowed as personal pay to be absorbed in future increase in pay. Where the minimum pay of the revised pay scale is higher than the pay drawn by the Government servant in the old scale, his pay will be fixed at the minimum of the revised scale. The respondents submitted that they have adopted the same principle which is contained in F.R. 23. The pay of the Lift Operators has been correctly fixed. Hence, the claim of the applicants is devoid of merits. It is further stated that the pay fixation was done as per Govt. of India, Ministry of Home Affairs, Deptt. of Personnel & AR, O.M. No. F.13/14/83-Estt (Pay-I) dated 9.1.1984 (CPRO 19/84) Ex.'R-1'. The pleas of the applicants that their pay should be fixed next above the pay and they should be allowed annual increment for the completed year of service is not covered under any Government Rules and is not sustainable.

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5. The applicants have filed the rejoinder alleging that their case is not covered under F.R. 23. The Fourth Central Pay Commission recommended two pay scales for the Lift Operators of Central Public Works Department (CPWD) viz. Rs.950-1500 and 800-1150 and classified the Lift Operator Grade I and Lift Operator Grade II. The classification was challenged by the Lift Operators of Central Public Works Department and the Writ Petition was allowed by the Supreme Court and the difference which was so created by the Pay Commission was thereby removed. All other details including the formula in refixing the salary scale recommended by the Commission and accepted by the Govt. of India remain unchanged. Therefore, while refixing the salary scale of the Lift Operators to the proposed scale of pay, i.e. Rs.950-20-1150-EB-25-1500, the formula of the Fourth Pay Commission given under Central Civil Services (Revised Pay) Rules, 1986 shall be adopted. Accordingly, the scale of pay is required to be refixed on the basis of the formula recommended by the Fourth Central Pay Commission and not on the basis of F.R.23 as contended by the respondents. An illustration how to fix the pay is given in the rejoinder which is as under :-

1. Existing scale of pay	Rs.260-6-290-EB-6-326-8-366-EB
	-8-390-10-400
2. Proposed scale of pay	Rs.950-20-1150-EB-25-1500
3. Existing basic pay	Rs. 342.00
4. DP/ADA at index	
average 608	Rs. 662.50

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5. Two instalments of interim relief	Rs. 110.00
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6. Existing emoluments	Rs.1114.50
7. Add 20% of basic pay subject to minimum of Rs.75.	Rs. 75.00
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8. Pay to be fixed in proposed scale	Rs.1189.50
	Rs.1200.00

'R-1' is not applicable in the present case.

6. In reply to the said rejoinder, the respondents have filed sur-rejoinder stating that F.R. 23 is applicable to their case, fixation of pay from RPR 73 scale to RPR 86 scale is not governed by the rules. Order dated 15.7.1991 as amended vide order dated 2.4.1992 is only replacement of the scale. The formula fixed by the 4th Central Pay Commission is revision of pay scale from CDS (RPR) 73 to CDS (RPR) 86. The said principle is not applicable for the reason that pay scale of Rs.210-290 of Lift Operators in RPR 73 scale has been replaced by revised scale under RPR 86 to Rs.800-1150. The applicants have availed the benefit of fixation of pay in RPR 86 scale of Rs.800-1150 on the formula prescribed in the SRO 12-E while switching over for RPR 73 scale of Rs.210-290 to the RPR 86 scale of Rs.800-1150. The

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pay in RPR 86 was subsequently revised w.e.f. 1.12.1987. Both these scales viz. 800-1150 and Rs.950-1500 are of RPR 86 scale and not from RPR 73 to RPR 86 scale. As such the formula prescribed in SRO 12-E for fixation of pay is not applicable in this case. The further reason advanced is revision of pay of Rs.800-1150 to Rs.950-1500 is in RPR 86 only and not from RPR 73 scale to RPR 86 scale. It is further stated that the applicants were drawing pay in RPR 86 w.e.f. 1.1.1986 in the scale of Rs.800-1150 and in the scale of Rs.950-1500 w.e.f. 1.12.1987. The applicants are not entitled/drawing any interim relief, Dearness Pay/Dearness Allowance at Index level of 608 prevailing before 1.1.1986 from the date they were brought under RPR 86 scale of Rs.800-1150 w.e.f. 1.1.1986 till date. As such the demand of applicants that the pay in revised scale of Rs.950-1500 (RPR 86) w.e.f. 1.12.1987 from the scale of Rs.800-1150 (RPR 86) should be fixed as per the formula in SRO 12-E is not tenable as they are not drawing element of IR, DP and DA at Index Level of 608. In other words, their demand is to account certain element of salary, which they are not actually drawing since 1.1.1986, for fixation of pay on revision of a pay scale under RPR 86 (Rs.800-1150) to another pay scale under RPR 86 (Rs.950-1500). The judgement did not direct the respondents to fix the pay on the formula SRO 12-E. Hence, prayed for dismissal of the OA. along with cost.

7. The question to be decided in the present case is when there is a new scale provided to the applicants in substitution of the old scale, the principle for fixation of the pay is whether governed by F.R. 23 or by revision of pay scale rules.

8. F.R. 23 is as under :-

" F.R. 23. The holder of a post, the pay of which is changed, shall be treated as if he were transferred to a new post on the new pay:

Provided that he may at his option retain his old pay until the date on which he has earned his next or any subsequent increment on the old scale, or until he vacates his post or ceases to draw pay on that time-scale. The option once exercised is final."

G.I., M.H.A., Deptt. of Per. & A.R., O.M. No. F.13/14/83-Est.P-I, dated 9.1.1984 is as under :-

" (6) Date of next increment in case of fixation at the minimum. -- When the scale of pay of a post is revised upwards without involving assumption of duties and responsibilities of greater importance, the fixation of pay of the incumbents is regulated under F.R. 23 and F.R. 22(a)(ii) {now F.R. 22 (1)(a)(2)} read with Audit Instruction (1) below F.R. 22. In other words, the pay of the incumbent is fixed at the same stage, if any, in the new scale and if there is no such stage, at the stage next below in the new scale, and the difference allowed as personal pay to be absorbed in future increases in pay. In both the cases, the next increment will be drawn on the date of increment in the old scale or in the new scale, whichever is earlier.

2. In cases where the minimum pay of the revised scale is higher than the pay drawn by the Government servant in the old scale, his pay will be fixed at the minimum of the revised scale. It is clarified that the next increment in the cases of the kind mentioned in the preceding paragraph should be allowed in the revised scale, only after completion of full incremental period of 12 months/24 months, as the case may be, at that stage, from the date of fixation of initial pay in the revised scale, subject to the provisions of F.R. 26."

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9. On perusal of the same, we are of the considered opinion that it is only a case of revision of pay upwards without involving assumption of duties and responsibilities of greater importance. hence, F.R. 23 read with F.R. 22 (a) (2) is applicable.

10. The applicants have already availed the benefit of RPR 73 to RPR 86 while their pay was revised in view of IVth Pay Commission. Hence, they are not further entitled to the said benefit of RPR 86.

11. The applicants' contention that their pay should be fixed taking into consideration their length of service and new entrants be fixed in the said scale at minimum of the same. We are not in agreement with the contention of the applicants because in substitution of pay scale or in revised pay scale upwards without involving the assumption of duties and responsibilities of greater ~~importance~~^{new}, point to point fixation is/are was never a policy of the Government. While considering the arguments to the effect that the facts which were not in existence on 1.12.1987 (which were in existence on 1.1.1986) should be made a criteria for fixing the applicants' pay in a revised scale of pay upwards without involving assumption of duties and responsibilities of greater importance can not be accepted.

12. In the result, we do not find any merit in the OA., it is liable to be dismissed and is dismissed accordingly with no order as to costs.

Kanta J-
(SMT.SHANTA SHAstry)
MEMBER (A)

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