

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 412 of 1993

~~Transfer Application No:~~

DATE OF DECISION: 31.03.1994

B.S. Wanjale & 3 ors. Petitioner

Mr. K.R. Pillai Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Mr. R.K. Shetty Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice V.S. Malimath, Chairman

The Hon'ble Shri Justice M.S. Deshpande, Vice Chairman

The Hon'ble Shri M.R. Kolhatkar, Member(A)

1. To be referred to the Reporter or not ? *Yes*
2. Whether it needs to be circulated to other Benches of the Tribunal ?

V. Malimath
Chairman 31/3-94

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY-1

ORIGINAL APPLICATION NO. 412 of 1993

1. Bajrang Sitaram Wanjale
New F Type; 53/2 Armament
Colony, Ganeshkind;
Pune 411007.
2. Maruti Shankarrao Raut
New F Type; 52/4; Armament
Colony; Ganesh Kind;
Pune 411007
3. Dattatray Ramanna Bhurewar
G.57/1 Armament Colony
Ganeshkind; Poona 411007
4. Bhiku Haribhau Gaikwad
No.228 Old Bazaar; Kirkee
Pune 411003

..APPLICANTS

V/s.

1. Union of India
through the Secretary
Ministry of Defence
New Delhi
2. The Director
Armament Research and
Development Establishment
Armament Post, Pashan,
Pune 411021.
3. The Scientific Advisor to the
Ministry of Defence and
Director General, Research &
Development, Ministry of
Defence, Govt. of India,
New Delhi

..RESPONDENTS

Coram: Hon. Shri Justice V.S. Malimath, Chairman
Hon. Shri Justice M.S. Deshpande, V.C.
Hon. Shri M.R. Kolhatkar, Member (A)

APPEARANCE:

Mr. K.R. Pillai
Counsel
for the applicants

Mr. R.K. Shetty
Counsel
for the respondents

JUDGMENT:

DATED: 31.03.1994

(Per: Hon. Justice V.S. Malimath, Chairman)

This case has been referred to the Full Bench as there are conflicting decisions on the question that has arisen for consideration in this case, the decision of the Bangalore Bench in OA No. 750/1991 supporting the case of the petitioners and the decision of the Hyderabad Bench in OA No. 983/1989 taking a contrary view.

2. The four petitioners in this case are the employees of the Armament Research and Development Establishment, Pune. They joined service as industrial employees and in due course earned promotions to cadres like Tool Makers, Fitter Gr.I, Examiner Gr.I etc., all these grades are collectively described as "Tradesmen A". The next promotional avenue for Tradesmen A is to the cadre of Chargeman-II. In pursuance of the recommendations of the IIIrd Pay Commission the scale of pay of Tradesman Gr.A was fixed at Rs.380-12-500-EB-15-560 and that of Chargeman-II in the pay scale of Rs. 425-15-500-EB-15-560-20-700. On the recommendation of the IIIrd Pay Commission a new grade called 'Master Craftsman' was sanctioned in the pay scale of Rs. 425-15-560-EB-20-640. This was done with a view to give incentive to highly skilled operators so that they remain in their own line and get reward for their special skills. The order of the Government creating the grade of Master Craftsman was issued on 21.1.1982, produced as Annexure 12. For sake of convenience it is extracted as follows:

Pr

"

No.1(2)/80/L(CIV.I)
Government of India
Ministry of Defence
New Delhi; the 21st Sept.1982

The Scientific Adviser to the Raksha Mantri
The Chief of the Army Staff

Subject: Creation of grade of Master Craftsman in
the Defence Establishments

In pursuance of the recommendations of the Third Pay Commission made in Chapter 19 of Volume I of its report, I am directed to convey the sanction of the President to the creation of a new grade of Master Craftsman in the scale of pay of Rs.425-15-560-EB-20-640 for the workers in the Highly Skilled Grade I (Scale of Rs.380-560) specified in Annexure I.

2. The procedure for selection to the grade of Master Craftsman shall be as follows:

- i) The number of posts of Master Craftsman in each trade shall be upto 10 per cent of the total number of sanctioned posts in Highly Skilled Grade I in each Organisation;
- ii) The workers should have rendered a total service of at least ten years continuously in the same or allied trade in the Skilled grade, out of which three years' service should be in the Highly Skilled Grade I;
- iii) These posts will be personal to the holders of the posts and will lapse with the retirement/wasting out of the incumbents ...
- iv) The incumbents selected for the post of Master Craftsman will forgo their normal promotion to the supervisory grade; and
- v) There will be no Trade Test. Instead, Assessment Reports on the individual workers shall be obtained in the Proforma attached as Annexure II.

Each Defence Establishment will constitute a Departmental Selection Committee consisting of the Head of the Department as the Chairman and two Technical Officers and one Administrative Officer. The Departmental Selection Committee shall keep before them the following criteria for selection:

Ph

-4-

- a) Standards of Craftsmanship will be judged more on the basis of persistent attainment of very high skill levels in job execution over a length of period rather than single achievement which may not represent the true level of skill attained by a particular individual; and
- b) achievements attributed to the person(s) recommended for the job of Master Craftsman should be available for inspection by Members of Departmental Selection Committee, if necessary, so as to ensure that the recommendations are based on sufficiently high standard to render elevation of such individual(s) to the post of Master Craftsman.

The cases will be sponsored initially by the Factories/Workshops/Unit Establishments which will be finally examined and decided by the Departmental Selection Committee which will meet and finalise their recommendations twice a year by 31st March and 30th September respectively. Orders for elevation will take effect from 1st April and 1st October of each year.

4. These orders take effect from the date of issue.

5. The expenditure involved will be debitable to the respective Heads of Defence Services Estimates.

6. This issues with the concurrence of the Ministry of Finance (Defence) vide their U.O. No.2432/PB dated 21.9.82.

Yours faithfully,

Sd/- xxx

(RAMAKRISHNA)
DEPUTY SECRETARY TO THE
GOVERNMENT OF INDIA

Clause (iv) of this order says that those selected ^{Master} for the post of Craftsman will forgo their normal promotion to the supervisory grade meaning thereby to the grade of Chargeman-II. This clause was, however, deleted by the subsequent order of the Government dated 25-11-1983, produced as Annexure 13. Thus the

Tradesman Gr. 'A' who were able to secure the new grade of Master Craftsman were entitled in their own turn to be considered for promotion to the supervisory grade of Chargeman-II. It is clear that those who came to be selected and appointed as Master Craftsman were entitled to fixation of their pay in the higher scale attached to the post of Master Craftsman.

3. The petitioners in this ^{case} on their being selected by the Departmental Selection Committee were promoted as Master Craftsman and orders pertaining to the petitioners are found in Annexure A1, A2, A3 and A4. The orders state that they have been promoted on the recommendations of the Departmental Selection Committee and that they will be on probation for a period of two years from the date of their promotion. In Annexure A4 it is further stated that the pay will be refixed on accrual of the next increment in the scale of pay in the lower post, under F.R. 22(C). Their pay was fixed in the scale of pay attached to the post of Master Craftsman applying F.R. 22(c). There is no dispute whatsoever about the correctness of the pay fixed on the petitioners becoming Master Craftsman. The petitioners in due course secured promotion to the supervisory grade of Chargeman Gr. II, they having been found fit and suitable for promotion by the Departmental Promotion Committee. On their promotion their pay was fixed in the scale of Rs. 425-15-500-EB-15-560-20-700 of Chargeman-II in accordance with F.R. 22(c). The orders fixing their

Pr

pay are produced as Annexures 10, and 11. For the fixation of pay what was taken into account is the pay they were receiving in the scale of Rs.425-640 of the post of Master Craftsman which they were actually holding. The Government by their circular No. 92/91 dated 20/25 June 1991, produced as Annexure 15 said that when a Master Craftsman is promoted as Chargeman Gr.II his pay has to be fixed with reference to his presumptive pay as Tradesman Gr.A. Such a view was taken on the ground that the grade of Master Craftsman is not a normal promotional level, it not being a feeder cadre for the supervisory grade of Chargeman-II. As the feeder grade for promotion to Chargeman-II is the grade of Tradesmen Gr.A it was directed that the presumptive pay as Tradesmen Gr.A should be taken into account in fixing the pay on promotion as Chargeman-II. The order further states that action to recover excess amount paid on wrong fixation should be taken after complying with the principles of natural justice. Accordingly show cause notices were issued to the petitioners. The petitioners in their reply to the show cause notices stated that as they were holding the post of Master Craftsman on the date on which they were promoted as Chargeman Gr.II it is the pay that they were actually drawing that should be taken into account and not ^{the} presumptive pay in the lower grade of Tradesman Gr.A. In spite of the petitioner's objection their pay was refixed by the impugned orders at Annexure 18 and 19 taking into account their presumptive pay in the cadre of

Tradesman Gr.A. By annexure 20, dated 24th August 1992 the petitioners have been informed of the reasons for the action taken to refix their pay on promotion as Chargeman Gr.II ~~taking into~~ ^{account} their presumptive pay as Tradesman Gr.A. For the sake of convenience the reasons stated are extracted as below:

"It has again been clarified by Department of Personnel & Training that "since as per Recruitment Rules Tradesman 'A' are eligible for appointment to the post of Chargeman Grade-II and thus when a Mastercraftsman is promoted to the post of Chargeman Grade-II his pay will be fixed with reference to his presumptive pay of Tradesman 'A' only". As far as the recovery of overpayment is concerned, Deptt of Personnel & Training has intimated that the judgment in O.A. No. 750/91 (F) Shri S.D. Sabhapathy & 20 Others Vs. Director, GTRE, Bangalore, is applicable to the petitioners only. Wherever recoveries are effected, a show cause letter may please be issued as advised earlier. Reply, if any received may please be considered and recoveries as per rules may be made, if necessary in instalments."

It is obvious that they refused to extend the benefit of the judgment of the Bangalore Bench on the ground that the benefit of the said judgment is restricted to the petitioners in that case, ignoring the fact that the petitioners are similarly situated in everyway. It is in this background that the petitioners have approached this Tribunal with this application challenging the action of the respondents in refixing their pay taking into account their presumptive pay in the grade of Tradesman Gr.A.

4. ~~Only the relevant facts~~ ^{be noted} as the controversy is in a very narrow compass. The feeder grade for

Chargeman Gr.II is the grade of Tradesman Gr.A and not the grade of Master Craftsman. The scale of pay of Master Craftsman is higher than the scale of pay of Tradesman A and lower than the scale of pay of Chargeman Gr.II. It is not disputed that it is on the basis of the recommendation of the D.P.C. that the petitioners were appointed as Mastercraftsman. The orders of appointment clearly state that they have been promoted and shall be on probation for a period of two years. Whereas the petitioners contend that they were promoted to the grade of Mastercraftsman the respondents contend that it was not promotion but appointment to the newly sanctioned grade of Mastercraftsman. It is also not disputed that the post of Chargeman Gr.II carries duties and responsibilities of greater importance than those attached to the post of Mastercraftsman and the post of Tradesman Gr.A. There is also no dispute about the fixation of pay of the petitioners on their appointment to the grade of Mastercraftsman. As the petitioners were promoted as Chargeman Gr.II in the year 1988 their pay has to be fixed in accordance with the F.R.22(c) which was in force on the date when they were promoted. F.R.22(c) came to be subsequently deleted by the Fundamental (3rd Amendment) Rules, 1989 which came into force on their publication in the Gazette of India on 16th September 1989.

5. As the controversy in this case is in regard to fixation of petitioners pay on their promotion to the

supervisory grade of Chargeman Gr.II we have to examine the relevant statutory provision governing fixation of pay in such situation viz., F.R.22(c). For the sake of convenience the same is extracted below:

"F.R.22-C. Notwithstanding anything contained in these Rules, where a Government servant holding a post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued"

This provision governs fixation of initial pay of the Government servant in the time scale of the higher post to which he is promoted or appointed. The scheme of the rules makes it clear that the intention of the rule making authority is to increase the emoluments of the Government servant to a reasonable extent when he is promoted or appointed to a post carrying duties and responsibilities of greater importance than those attached to the post held by him. If the conditions specified in the rule are satisfied ^{then} ~~for~~ the initial pay in the time scale of the higher post has to be fixed in accordance with the formula prescribed therein. As a first step his pay in the lower post has to be increased by adding one increment at the stage at which such pay has accrued. Thereafter the pay of the Government servant should be fixed in the scale of the higher post at the stage next above the pay initially arrived at by

following the first step. It is the amount so arrived at that would be the initial pay of the Government servant on his promotion or appointment. We ^{do} ~~thus~~ find that the first part of the rule stipulates three conditions to be satisfied. They are (i) The Government servant must be holding a post in substantive, temporary or officiating capacity, (ii) he should be promoted or appointed in a substantive, temporary or officiating capacity to another post and (iii) the post to which he is promoted or appointed should carry duties and responsibilities of greater importance than those attaching to the post held by him. If these three conditions are satisfied the initial pay of the Government servant on his promotion or appointment to another post has to be fixed in accordance with the formula prescribed therein. Though the rule opens with a non-abstract ^{or} ~~ive~~ clause it is not the case of the respondents that there is any other provision which bears on the fixation of the petitioners pay on their promotion or appointment as Chargeman Gr.II. We shall, therefore, proceed to examine if the three conditions specified by Rule F.R. 22 (C) are satisfied in this case.

6. On the date on which the petitioners were promoted or appointed as Chargeman Gr.II they were holding the post of Master Craftsman. It was not a stop gap arrangement. The Respondents submit that it was only upgradation of Tradesman 'A' and not promotion. The counsel for the respondents submitted that it is only with a view to give an incentive

to Tradesman Gr.A that this privilege was accorded as an one time measure. He pointed out that the post would revert to the grade of Tradesman Gr.A on the incumbent ceasing to hold the post on retirement, death etc. He also emphasised the fact that the post of Mastercraftsman has not been included in the feeder cadre for the post of Chargeman Gr.II and that the cadre of Tradesman Gr.A continues under the rules to be the feeder cadre for Chargeman Gr.II. But the creation of the post of Master craftsman with higher scale of pay than Tradesman Gr.A, the prescription of the mode for selection to the said post by the D.P.C. and the orders passed stating that the petitioners have been promoted to the post of Master craftsman and placed on probation for a period of two years clearly establish that they came to be appointed as Master craftsman carrying a higher pay scale, by the process of promotion. What is necessary to ascertain so far as the first condition is concerned whether the petitioners were holding the post of Master craftsman in a substantive, temporary, or officiating capacity on the date on which they were promoted or appointed as Chargeman Gr.II. It is nobodys case that it was only a stop gap arrangement. The petitioners who were appointed as Master craftsman on probation completed their probation satisfactorily. They were entitled to continue in those posts until they attained the age of superannuation. The petitioners were thus holding the post of Master craftsman in a substantive capacity. Thus the first condition is duly satisfied in this case.

7. As regards the second condition what has to be ascertained is whether the petitioners who were holding the posts of Master craftsmen were promoted

or appointed in a substantive, temporary or officiating capacity to another post. It is not disputed that the petitioners have been promoted to the post of Chargeman Gr.II carrying a higher scale of pay. It is regular promotion in accordance with the rules as per the recommendations of the duly constituted Departmental Selection Committee. The orders clearly state that they were promoted to the post of Chargeman Gr.II. There is satisfactory material which establishes that the petitioners were promoted to another post of Chargeman Gr.II in a substantive capacity. Thus the second condition is also satisfied.

8. The third condition to be satisfied is whether the post to which the petitioners have been promoted carries duties and responsibilities of greater importance than those attached to the post held by the petitioners. On the date on which the promotions were effected the petitioners were holding the post of Master craftsman. Respondents admit that the post of Chargeman Gr.II carries duties and responsibilities of greater importance than those attached to the post of Master craftsman as also the post of Tradesman Gr.A. On the admitted facts we hold that the third condition is also satisfied.

9. As all these three conditions are satisfied the initial pay in the time scale of the higher post viz., Chargeman Gr.II has to be fixed in accordance with the formula prescribed in F.R. 22(c). For that purpose what has to be taken into account is the pay of the post actually held by the petitioners on the date of their promotion as Chargeman Gr.II.

Admittedly the petitioners held the post of Master Craftsman. Hence it is the pay of the petitioners

in the post of Master Craftsman that has to be

taken into account for the purpose of fixation of their initial pay in the higher post of Chargeman Gr.II on their promotion. We fail to see how the presumptive pay in the grade of Tradesman Gr.A can be taken into account. F.R. 22(c) contemplates taking into account the pay of the post held by the Government servant on the date of his promotion and not the notional pay that he might have drawn had he continued in the lower post of Tradesman Gr.A. We have, therefore, no hesitation in holding that taking into account the presumptive pay of the petitioners in the post of Tradesman Gr.A, which post they were not holding on the date of their promotion to Chargeman Gr.II is clearly opposed to the statutory provisions contained in F.R. 22(c). Consequently it has to be held that the action taken by the respondents is not correct.

10. We shall now advert to the decisions of the Bangalore and Hyderabad Benches. The ultimate decision of the Bangalore Bench no doubt accords with the view we have taken but for different reasons. The Bangalore Bench held that the departmental authorities having treated the petitioners in that case as having been promoted from the cadre of Master craftsman to the cadre of Chargeman Gr.II it was not just and equitable to deprive them of the benefit of their fixation of pay merely on the ground that the department later realised the mistake. The decision rests on equitable considerations and not on examination of the statutory provisions and the rights of the parties. We have on examination of the statutory provision and the facts held that initial pay has to be fixed taking

into account the pay of the post of Master Craftsmen held on the date of promotion and not the notional or presumptive pay in the post of Tradesman 'A'. The decision of the Hyderabad Bench in O.A. No.983/89, no doubt supports the case of the respondents. The Hyderabad Bench has held that though the petitioners in that case were Mastercraftsmen when they were promoted as Chargeman Gr.II they earned their promotion having regard to seniority and position as Tradesman Gr.A and not as Mastercraftsman. It is on this basis that they held that what has to be taken into account is the presumptive pay of the promotees in the post of Tradesman Gr.A and not the pay they were drawing in the post of Master craftsman which they were actually holding on the date of their promotion. We have analysed F.R. 22(c) and pointed out that once it is established that the Government servant has been promoted or appointed to another post carrying duties and responsibilities of greater importance than those attached to the post actually held by him in a substantive, temporary or officiating capacity on the date of his promotion or appointment, his initial pay has to be fixed taking into account his pay in the post actually held by him and there is no scope for taking into account the presumptive pay of a post which he did not hold on the date of promotion or appointment. With respect we find it difficult to agree with the view taken by the Hyderabad Bench as it is clearly opposed to the statutory provisions contained in the F.R. 22(c). We hereby over rule the decision of the Hyderabad Bench in O.A. 983/89.

11. For the reasons stated above this application is allowed with the following directions:

- i) The impugned orders at Annexures 17, 18 and 19 are hereby quashed.
- ii) Respondents are restrained from reducing the pay of the petitioners on the strength of the orders dt.20/25.6.1991, Annexure 15.
- iii) If any amount has been recovered from the petitioners on the strength of the impugned orders the same shall be refunded to the petitioners forthwith.
- iv) The pensionary and other retirement benefits of such of the petitioners as may have retired in the meanwhile shall be re-computed and the benefit accorded in the light of our aforesaid directions.
- v) No order as to costs.

M.R. Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

M.S. Deshpande

(M.S.DESHPANDE)
VICE-CHAIRMAN

V.S. Malimath

31-3-1994
(V.S.MALIMATH)
CHAIRMAN.

trk.