

46/order/mew

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

REVIEW PETITION NO: 8/2001 in
ORIGINAL APPLICATION NO: 1307.94

the 14th day of March, 2002

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

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

R.E. Mulay

...Applicant

By Advocate Shri S.P. Saxena.

V/s

Union of India and Others.

...Respondents.

By Advocate Shri R.K. Shetty.

O R D E R

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

The applicant in OA 1307/94 which was decided on 7.11.2000 has filed this Review Petition alongwith delay condonation application.

2. The applicant has alleged that he has received copy of the order on or around 14.12.2000, the delay was due to the reason that the applicant had to come to Tribunal's office to search for DOPT letter dated 4.11.2000 in the file of OA 1307/94 before filing Review Petition, there was also holiday in the third week of December 2000 and the relevant original file of OA 1307/94 was not readily made available to the applicant in the office of the Tribunal, it was only on 9.1.2001 that the applicant could get inspection of Original file of 1307/94 to find the availability of DOPT Circular dated 4.11.2000 referred in Tribunal's order dated 7.11.2000, as no circular of DOPT dated 4.11.2000 could be located in the file of OA 1307/94 in Tribunal

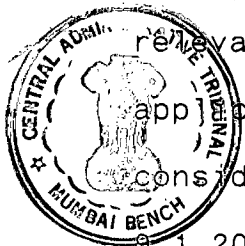


the applicant had to seek legal advice before putting up the Review Petition. In this process, a few weeks have passed and the Review Petition is filed on 15.2.2001 belatedly.

3. In view of Rule 17(i) of CAT Procedure Rules 1987 no petition for Review shall be entertained unless it is filed within 30 days from the date of order of which the Review is sought. In the present case order was passed on 7.11.2000 the applicant though claims that he has received copy of the order on 14.12.2000 but the fact remains that he has received on 12.12.2000, after 9.1.2000 the applicant stated that he decided to seek legal advice before putting up the Review Petition without giving further details. The ground that there were holidays in the third week of December 2000, is not a truthful fact, as the holidays were in last week of December 2000. The relevant original file OA 1307/94 was not made available to the applicant in the office of Tribunal, even if taken into consideration he has to explain the delay with effect from 9.1.2001 After receipt of copy of the order he was having about two weeks time. Thus it is a case where in our consider opinion the delay is not explained which prevented the applicant from filing the Review Petition, as such we do not find sufficient cause to condone the delay in filing the Review Petition.

4. We have taken a view that there does not exist sufficient cause for condonation of delay, had there been our opinion otherwise then the ground on which the Review is sought are that in para 7 of the Tribunals order dated 7.11.2000 it is

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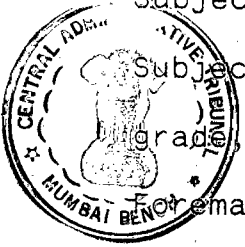


mentioned that the applicant was promoted to the post of Principal Foreman on 28.4.1980, the above observations is incorrect as the applicant was never promoted to the post of Principal Foreman at any time, further the observations of the Tribunal that certain channel of promotion came to be allowed and that this channel was later closed cannot help the case of the applicant, is not true, as in fact no promotional channel was created for the post of Principal Foreman but the Foreman not desirous for regular promotion to Jr. Scientific Officer's post were granted the extended scale of pay of Foreman of Rs. 840 - 1200, and given a nomenclature of Principal Foreman which was only a placement of Foreman in above scale irrespective of seniority or DPC proceedings, in para 6 of the order a reference is made to DOPT circular dated 4.11.2000, while the said circular does not exist but which may be 4.11.1993, the said circular was also placed before the Tribunal in the case of N.V. Nadgauda V/s Union of India (OA 1309/94) decided on 7.12.1995, the applicant and Shri Sahashrabudhe belongs to common cadre, the seniority list was common, in para 8 of the order dated 7.11.2000 the Tribunal has noted that the contentions of the DOPT circular was also subject matter in the case of Nadgauda and the Tribunal allowed the OA, the observations of the Tribunal in para 8 that in any case it is a Single Bench judgement and the point regarding anomaly as direct result of application of FR 22C was not considered hence in the facts and circumstances of the case the ratio of the case depended cannot be sought to be binding on us. Hence this Review Petition.

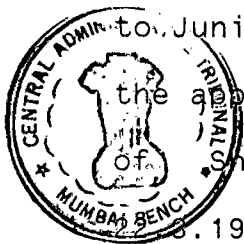


5. The applicant claims that he joined the Office of Respondent No.3 in the year 1960 as Technical Supervisor Gr.III, promoted to higher post of Chargeman Gr.II, Assistant Foreman and Foreman. He was promoted as Foreman w.e.f. 1.11.1971 in the scale of pay of Rs.450-25-650 and his basic pay was fixed at Rs.525/- in the above scale. Shri M.P.Sahasrabudhe was promoted to the post of Foreman w.e.f. 6.12.1973. The scale of pay of Foreman was revised by III Pay Commission w.e.f. 1.1.1973 to Rs.840-40-1040. Consequent to the revision of scale of pay of Foreman w.e.f. 1.1.1973, the pay of the applicant was fixed at Rs.880/- w.e.f. 24.4.1973 while the pay of M.P.Sahasrabudhe was fixed at Rs.920/- p.m. w.e.f. 6.12.1973 on his promotion to Foreman grade.

6. The applicant further claims that he belonged to SP Subject No.4, whereas Shri M.P.Sahasrabudhe belonged to SP Subject No. 3. For the purpose of promotion to the next higher grade, i.e. Junior Scientific Officer from the feeder grade of Foreman, a combined seniority lists of all Foremen from all Subjects is prepared on the basis of length of service in the feeder grade of Foremen. The said seniority list is for promotion to the post of Junior Scientific Officer. His name ought to have appeared in such seniority list at higher position vis-a-vis Shri M.P.Sahasrabudhe. There was post of Principal Foreman prior to IVth Pay Commission carrying the scale of pay of Rs.840-40-1200. The Foreman were given option for promotion to



the post of Principal Foreman or to wait for promotion to Class II Junior Scientific Officer post carrying the scale of pay of Rs.650-30-740-35-880-40-1200 and those who opted for Principal Foreman were not to get any further promotion in their career, whereas other Foreman who do not opt for Principal Foreman post will be considered for promotion to Junior Scientific Officer post. Shri M.P.Sahasrabudhe opted for Principal Foreman post while the applicant did not opt for the same. With Effect from 1.1.1986, the post of Principal Foreman came to be abolished and post of Foreman as well as post of Principal Foreman were merged into one single scale of Rs.2375-3500. The applicant was promoted to the Junior Scientific Officer w.e.f 9.8.1986 in the scale of Rs.2000-3500, whereas Shri M.P.Sahasrabudhe was promoted to Junior Scientific Officer post w.e.f. 22.3.1988. The pay of the applicant was fixed at Rs.3200/- as on 9.8.1986, whereas pay of Shri M.P.Sahasrabudhe was fixed at Rs.3500/- w.e.f. 22.3.1988. The applicant as on 22.3.1988 was drawing a basic pay of Rs.3,300/-. Hence, the claim for stepping up.



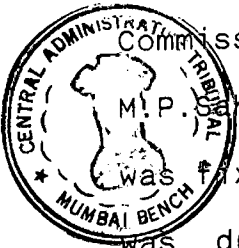
7. The claim of the applicant is denied by the respondents stating the fact that the applicant and Shri M.P.Sahasrabudhe was holding the different SP Subject - applicant was holding SP Subject No.4 while M.P.Sahasrabudhe was holding SP Subject No.3 and as such both of them belonged to the different AHSP, i.e. Cadre Controlling authority and hence the applicant is not entitled for the pay at par with that of M.P.Sahasrabudhe. This has been intimated to the applicant vide CQA(A) Kirkee

No.25120/Estt. dated 22.9.1992 (Exhibit-'A'). Therefore, the OA. is devoid of any merit. The claim of the applicant is a stale claim. The cause of action, if any, had arisen from 9.2.1973 and as such this Tribunal has no jurisdiction to decide the matter. It is further alleged by the respondents that the applicant was appointed as Supervisor Gr.III on 3.6.1960 at Rs.100/- p.m. whereas Shri M.P.Sahasrabudhe was appointed in similar post earlier than him on 15.11.1957. On 1.11.1971 the applicant was drawing Rs.525/- in the post of Foreman whereas Shri Sahasrabudhe was drawing less pay of Rs.475/- in the junior grade of Assistant Foreman in another discipline, i.e. Weapons despite being senior since recruited earlier than the applicant at entry point. The applicant on promotion to the post of Foreman was drawing more pay, i.e. at the rate of Rs.840/w.e.f.



1973 whereas Shri M.P.Sahasrabudhe was drawing Rs.830/- as Assistant Foreman while working at another establishment, i.e. Jabalpur whose cadre controlling authority is also different than that of the applicant. Shri M.P.Sahasrabudhe's date of increment happened to be earlier, i.e. 9.2.1973, thereby he has started drawing more pay than the applicant. The applicant on his promotion as Foreman with the enhance benefit of pay fixation after the implementation of IIIrd Pay Commission's recommendation. Meanwhile, the Government has created a special category of Principal Foreman in the pay scale of Rs.840-1200 in accordance with the recommendations of the IIIrd Pay Commission to promote those Foreman who were excellent as Heads of

Workshops. Opportunity to opt for the post of Principal Foreman was open to all senior Foreman who were eligible for the post including the applicant. In the instant case, Shri M.P. Sahasrabudhe opted for the post of Principal Foreman and accordingly he was promoted to the said post w.e.f. 28.4.1980 and started drawing pay at the rate of Rs.1080/- and he continued to draw his annual increment till he reached the maximum of the scale of Rs.1200/- whereas the applicant remained at the maximum of the scale of the Foreman Grade at Rs.1040/- since he did not opt for the post of Principal Foreman. As such, the benefit available to Shri M.P.Sahasrabudhe was not naturally available to the applicant. The post of Principal Foreman and Foreman merged into one single pay scale of Rs.2375-3500 by the IVth Pay Commission w.e.f. 1.1.1986 and accordingly, the pay of Shri M.P.Sahasrabudhe was fixed at Rs.3300/- and the applicant's pay was fixed at Rs.3050/- w.e.f. 1.1.1986. Thus, M.P.Sahasrabudhe was drawing more pay even on his promotion as Junior Scientific Officer than that of the applicant. Hence, prayed for dismissal of the OA. along with cost.

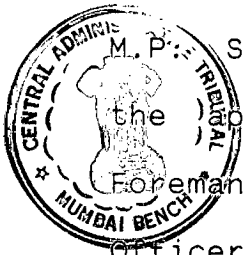


8. The narration of the facts clearly makes out that it is no one's case that the applicant was promoted to the post of Principal Foreman on 28.12.1980. It is true that no promotional channel was created but post of Principal Foreman was created and option was asked for. Observation regarding the order passed by the Single Bench being not binding on Division Bench, there is no Circular dated 4.11.2000 but in fact Circular dated 4.11.1993

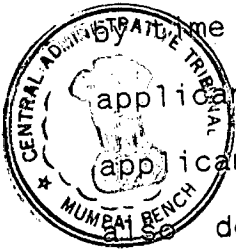
does exists. As such, the observation in above respects were not correct. As such, order dated 7.11.2000 deserves to be recalled and is recalled.

9. The grievance of the applicant as narrated above in para 5 of this order relates to the year 1973. Without recording any opinion about any defence raised by the respondents and allegation of the application in respect of the said question, it is suffice to state that the Tribunal does not have jurisdiction to adjudicate on the said question. As such, we refrain ourselves from recording any opinion on the said question.

10. The applicant and M.P.Sahasrabudhe belonged to two different SP Subject. The applicant belonged to SP Subject No.4 while Shri M.P.Sahasrabudhe belonged to SP Subject No.3. Shri M.P.Sahasrabudhe opted for the post of Principal Foreman while the applicant did not opt for the said post and continued as Foreman and thereafter promoted to Gr.II Junior Scientific Officer. The fact that post of Principal Foreman came to be abolished is only a chance. Shri M.P.Sahasrabudhe who was in entry grade in the job since 1957 while the applicant entered in job in 1960. Hence, salary of Shri M.P.Sahasrabudhe was higher throughout. It is not a case of stepping up of pay. Regarding stepping up of pay, we have an order of Full Bench in case of A.Venkataramani vs. Union of India & Ors. decided on 6.9.2001 which lays down the proposition that an employee can claim only stepping up under F.R.22-C and none else. As such, even on merits the applicant has no case.



11. In the result, Review deserves to be dismissed as barred
 and is dismissed accordingly. Even on merits the
 applicant has no case. As such even on merits, the claim of the
 applicant which was dismissed earlier though on different grounds
 deserves to be dismissed and is dismissed accordingly with
 no order as to costs.



Certified True Copy
 Date 17/6

How
 Section Officer

Central Admn. Tribunal

Bombay Bench

Dated :

CAT/MUM/JUDL/OA 1307/94/3713-14

Copy to :

1. Shri S.P. Saxena, counsel for the Applicant.
2. Shri R.K. Shetty, counsel for the Respondents.

Signature
 9/11/02

Ans
 SECTION OFFICER.

OC
Signature
 16/6

Signature
 19/4/02
 for R.K. Shetty

Despatched on 19-4-02
Signature
 DESPATCHER