

THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application No.1307/1994

Date of Decision: 7th Day of November, 2000.

Cour: Hon'ble Shri B.N. Bahadur, Member (A)
And
Hon'ble Shri S.L. Jain, Member (J)

Shri R.E. Mulay,
(Retd. Junior Scientific Officer,)
C.B.A. (A), Kirkee, Pune - 411 003),
residing at -8, Nivedita Aptt.,
Near Dandekar Bridge,
Behind Petrol Pump
Pune 411030

.... Applicant

(Shri S.P. Saxena, Advocate)

vs.

1. Union of India, through
the Secretary,
Ministry of Defence,
South Block, DHQ P.O.,
New Delhi 110 011.

2. The Director General of
Quality Assurance (Armaments),
Dept. of Defence Production,
Ministry of Defence, DHQ PO,
NEW DELHI - 110 011.

3. The Controller,
C.Q.A. (A), Kirkee,
Pune 411 003.

... Respondents

(Respondents by Shri R.K. Shetty, Advocate)

ORDER (DRAFT)

[Per: B.N.Bahadur, M (A)]

This is an Application made by Shri R.E. Mulay, retired Junior Scientific Officer (JSO), C.Q.A. Kirkee, Pune seeking the relief, in substance, for a direction to Respondents to refix his pay at par with his junior, one Shri M.P. Sahasrabudhe, who also retired as Junior Scientific Officer. The refixation is sought in the Grade/posts of Foreman and JSO. Consequential reliefs for

payment of differences, arrears etc. arising out of such refixation are also sought.

2. The case sought to be made by the Applicant is that although the aforesaid Shri Sahasrabudhe was junior to him, his pay fixation was made in a manner that he was fixed at a higher level. The Applicant, therefore, prays that he has a ground for fixation of his pay at the same level as that of Shri Sahasrabudhe, from 5.12.1973. The Applicant describes in detail his service background, and the chronology of events which are relevant to the pay fixation. It is averred by the Applicant that he belonged to S.P. Subject No.4, whereas Shri Sahasrabudhe belonged to S.P. subject No.3. He also states that at a certain stage in the career of these persons, an option was provided either to go as Principal foreman or to go as Junior Scientific Officer. Admittedly, Shri Sahashrabudhe had opted for the channel of Principal Foreman and the Applicant had opted for the channel of Junior Scientific Officer. It so happened later that the post of Principal Foreman was merged with the post of Foreman and, hence Shri Sahashrabudhe also came into the channel of promotion for Junior Sientific Officer.

3. The Respondents have filed a Written Statement, where the first point made is that the two persons concerned belonged to different Cadre Controlling authorities and hence there could be no claim by the Applicant for protection of his salary vis-a-vis Shri Sahasrabudhe. It is averred that the applicant was informed accordingly on 22.9.1992. The Respondents also take the point regarding limitation, delay, and laches and seek the dismissal of the Application on this ground alone.

4. The details of the careers of the Applicant and Shri Sahashrabudhe are then described in the Written Statement of Respondents, and the point taken that though Shri Sahashrabudhe

was junior to the Applicant as Assistant Foreman, he was promoted in the higher Grade of Principal Foreman on 28.4.1980 and the Applicant did not opt the said channel of promotion. This has been explained by Learned Counsel Shri Shetty at the time with detailed reference to a comparative statement filed by him, regarding the factual position of the chronology of the career of Shri Sahashrabude and Shri Mulay.

5. We have heard learned Counsels on both sides -- Shri S.P.Saxena for the applicant and Shri R.K.Shetty for Respondents. [In regard to the point relating to limitation, Shri Saxena sought the support from the ratio of the case of *M.R.Gupta* decided by the Supreme Court and pleaded that his was a case of continuing cause of action and therefore he was not hit by the law of limitation/or delay or laches.] Shri Saxena took us over the details of the career of the applicant, making the point as to how the applicant was senior to Shri Sahashrabude. Shri Saxena also sought the support from the case of *N.V. Nadgauda vs. UOI* decided by the Single Member Bench of this Tribunal on 7.12.1995 in O.A. 1309/99. He argued at some length in regard to all these points. Shri Saxena also stressed the point that the Applicant was promoted earlier as JSO as detailed in Para 4.7 of the O.A. and that while he was Senior to Shri Sahashrabude on the post of JSO, his pay was nevertheless fixed at a lower level and, therefore, deserved to be stepped up.

6. Learned Counsel Shri R.K.Shetty sought to distinguish the point made in the case of *N.V. Nadgauda* and relied on the Circular of the Department of Personnel dated 4.11.2000, a copy of which is available at Annexure R.2. Shri Shetty took us over the detailed comparative statement filed by him showing the pay of the applicant and Shri Sahasrabudhe at various stages.

7. The first point that is clear is that even though the initial appointment at the lowest level was in 1975 for Shri Sahasrabudhe as against Shri Mulay who joined in 1960. Both were however, (directly) then recruited as Assistant Foreman in 1966. What is more important is the fact as seen from the comparative statement that Shri Sahashrabudhe was promoted as Foreman on 6.12.1973, whereas Shri Mulay He was promoted as Principal Foreman on 28.12.1980. Importantly Shri Sahashrabude got promoted to the post of Principal Foreman on 28.4.1980 and was fixed at Rs.1080 on the stage. The Applicant continued as Foreman during all this time for the reasons as described above. Now the fact that a certain channel of promotion came to be allowed and that this channel was later closed cannot help the case of the Applicant. The point is that because of the facts of the case Shri Sahashrabude came to be fixed at a level of pay higher than that of Mulay. This was as per rules at that time and the benefit of protection of pay cannot be claimed by Shri Mulay.

8. We also note from the aforesaid Circular of the DOPT that conditions had been laid down under which the cases of stepping up of pay is to be considered and allowed. One of the conditions at Sub para (c) reads as follows:

(c) the anomaly should be directly as a result of the application of FR 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments or on any other account the above provisions will not be invoked to step up the pay of senior officer."

This condition which is one of the essential condition is not satisfied. The case of Shri Mulay also can be distinguished ~~alone~~ with the same preposition. In any case it is a Single Bench judgement and the point regarding anomaly as direct result of application of F.R. 22C was not considered hence in the facts ~~the ratio of the case depended on~~ ^{1/28} and circumstances of the case ~~cannot be sought to be binding on~~ us.

9. ~~In view of the above discussions, there is no merit in the application and it is hereby dismissed. There is no orders as to costs.~~

Member (J)
sj*

Member (A)