

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI
NAGPUR CASE - TO BE PRONOUNCED AT BOMBAY.

ORIGINAL APPLICATION NO. 487/199

Date of Decision: 13-11-96

Chamta Chinduji Chachere

Petitioner/s

Shri S.V.Gole

Advocate for the
Petitioner/s

V/s.

Union of India & 2 Ors.

Respondent/s

Shri M.G.Bhangade

Advocate for the
Respondent/s

CORAM:

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

Hon'ble Shri

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?

M.R.Kolhatkar
(M. R. KOLHATKAR)
MEMBER (A)

abp

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG. NO.6, PRESCOT ROAD?4th FLOOR,
MUMBAI - 400 020.

ORIGINAL APPLICATION : 487/94.

DATED THIS 13th DAY OF NOVEMBER, 1996.

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

Chamta Chindhuji Chachere.,
Chargeman Gr.II, Labour Office,
Ordnance Factory Bhandara,
P.O.Jawaharnagar,
District, Bhandara.

... Applicant.

By Advocate Shri S.V.Gole.

v/s.

1. Union of India,
Through the Secretary,
Ministry of Defence, New Delhi.

2. The Chairman,
Ordnance Factory Board,
Calcutta.

3. The General Manager,
Ordnance Factory,
Bhandara.

... Respondents.

By Advocate Shri M.G.Bhangade.

X ORDER X

X Per Shri M.R.Kolhatkar, Member (A) X

In this OA, the applicant has challenged the order dated 12/10/93 at page-8 rejecting the claim of applicant for stepping up of his pay with reference to his junior one Shri Y.S. Kumbhalkar. Comparative Statement in respect of the applicant vis-a-viz Shri Kumbhalkar is given below:-

COMPARATIVE STATEMENT IN RESPECT OF APPLICANT VIS-A-VIS
SHRI KUMBHALKAR

Sl. No.	Description	Applicant Date	Y.S. Kumbhalkar Date	Pay.
1.	Appointment of L.D.C.	18/11/64	30/12/64	Rs.110/-
2.	Promotion to U.D.C.	1/12/69	1/12/69	Rs.130/-
3.	Substantive and Permanent U.D.C.	1/1/79	1/1/79	Rs. 404/-

4. Substantive and Permanent U.D.C.	1/1/80	Rs. 416/-	1/1/80	Rs. 416/-
5. Substantive and Permanent U.D.C.	-	-	26/5/80	Rs. 416/-
6. Sanctioned Special Pay to U.D.C.	-	-	26/5/81	+ Rs. 35/-
7. Promotion to Supervisor 'A' Gr. (NT/NS)	26/5/80	Rs. 440/-	2/1/81	Rs. 485/-

(* Due to fixation)

2. It is evident from the statement that the applicant is senior to Shri Kumbhalkar and he was promoted as Supervisor earlier than Kumbhalkar namely 26/5/80 whereas Shri Kumbhalkar was promoted as Supervisor on 2/1/81. However, in the meanwhile Shri Kumbhalkar was sanctioned special pay in connection with 'arduous nature of work/^{but}' the applicant prior to promotion did not get the benefit of special pay. Thus the difference in pay arose with effect from 2/1/81 when the pay of Shri Kumbhalkar was fixed at Rs. 485/- after taking ~~into~~ account the special pay drawn by him in the lower grade of UDC. It would appear that this difference in the pay drawn by Shri Kumbhalkar vis-a-vis applicant/also reflected when the pay fixation was in terms of 4th pay commission with effect from 1/1/86. The applicant had represented regarding stepping up of pay in terms of old FR-22(c) but his representation was rejected vide letter dated 30/3/93 at page-15 and 15/4/93 at page-16 and the Impugned order clearly reiterates the earlier stand of the department as confirmed by the Mead Office at Calcutta.

3. According to the applicant, he is entitled to stepping up of pay because the consent of the applicant was not obtained by the Respondent No.3 before effecting promotion to the post of

supervisor on 26/5/80 because had the applicant been consulted, he might not have consented to get promoted and he would have preferred to work as UDC and to avail the benefit of special pay of Rs.35/-p.m. According to the applicant, the difference in the pay is entirely due to fortuitous circumstances and that all conditions under FR-22(c) are fulfilled and therefore the rejection of the representation by the respondents is illegal and that the respondents should be directed to step up the pay of the applicant with all consequential benefits.

4. The respondents have opposed the OA. Regarding the contention of, the applicant that his consent for promotion was not obtained, the respondents have contended that the applicant was promoted on 26/5/80 and he did not raise any objection during the two years he remained on probation, and any objection raised after a lapse of a number of years cannot be accepted as legally valid.

5. According to the respondents, the junior of the applicant got the benefit of special pay before he got promoted to Supervisory Grade and the same was taken into consideration for fixation of pay. FR-22(c) has no applicability to his case.

6. As is well known for grant of relief of stepping up of pay to a Senior with reference to his junior who is drawing more pay, the following conditions are required to be fulfilled.

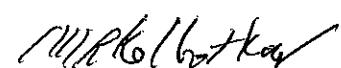
- (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre.
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical.
- (c) The anomaly should be directly as a result of the application of F.R.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, the above provisions will not be invoked to step up the pay of the senior officer.

7. It will be seen that in the instant case, the condition at (c) is not fulfilled. It is clear that in the lower post, i.e. the post of U.D.C., the junior was drawing the higher rate of pay than the applicant because of grant of special pay for performing ^{hard}arduous nature of work. The relief of stepping up of pay can be granted only if all 3 conditions are fulfilled.

7. At the argument stage, counsel for applicant relies on T.P. Shyamalan's case which was decided by this very bench, ~~reported at~~ 1995(31) ATC - 701. The respondents have also relied on E. Gopalakrishnan and Others reported at 1995(32) ATC - 131 in which the Supreme Court has held that since no special pay was drawn by appellants they are not entitled to stepping up of pay for computing pension. The case of ~~xxx~~ T.P. Shyamalan is not applicable because in that case, the issue involved was that of identity of the junior with whom the senior compares his case. In the instant case there is only one junior with reference to whom the applicant has compared his case.

8. I am of the view that In the facts and circumstances, OA has no merit and the applicant is not entitled to any relief and the same is therefore dismissed with no orders as to costs.

abp.


(M. R. KOLHATKAR)
MEMBER(A)